

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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CLARA J. CURTIS,

Plaintiff in Error,

vs.

THE NORTH AMERICAN INDIAN, INC., a Corporation, E. S. PEGRAM and GUTSON BORGLUM,

Defendants in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

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FILED

AUG 10 1921

F. D. MONCKTON,

CLERK



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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CLARA J. CURTIS,

Plaintiff in Error,

vs.

THE NORTH AMERICAN INDIAN, INC., a Corporation,  
E. S. PEGRAM and GUTSON  
BORGLUM,

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Upon Writ of Error to the United States District  
Court of the Western District of Washington,  
Northern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Counsel.**

JOHN G. BARNES, Esq., Attorney for Plaintiff  
in Error,

1017 White Building, Seattle, Washing-  
ton.

ELIAS A. WRIGHT, Esq., Attorney for Defend-  
ants in Error,

631 Burke Building, Seattle, Washington.

SAM A. WRIGHT, Esq., Attorney for Defend-  
ants in Error,

631 Burke Building, Seattle, Washington.

C. K. POE, Esq., Attorney for Defendants in Er-  
ror,

405 New York Building, Seattle, Washing-  
ton.

A. J. FALKNOR, Esq., Attorney for Defendants  
in Error,

405 New York Building, Seattle, Washing-  
ington. [1\*]

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United States District Court, for the Western  
District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

### **Complaint.**

Comes now the plaintiff and for cause of action against the defendants says:

#### **I.**

That the plaintiff is a corporation, organized and existing under and by virtue of the laws of the State of New York, with principal place of business in New York City, New York.

#### **II.**

That at all times mentioned herein, until within the last year the defendants were husband and wife, doing business as Curtis Studio, and are citizens, residents and inhabitants of King County, Washington, and within the district of the above-entitled court.

#### **III.**

That the defendants are wrongfully and unlawfully in possession of a large amount of personal property belonging to the plaintiff, and deny the right of the possession to the plaintiff herein, and wrongfully and unlawfully hold [2] possession of said property in said King County, Washington, in said District, notwithstanding the plaintiff has demanded possession thereof.

#### **IV.**

That the property wrongfully held by the defendants consist of the following:

1 motion picture machine re-wind; 2 boxes of lantern slides; 1 net; 2 boxes of phonograph records; 1 camp equipment; 1 box containing clippings, articles and reviews of the North

American Indian; 1 Indian saddle; 1 phonograph; two bundles of 3 tents each; 1 tripod; 1 large cabinet full of reviews of North American Indian; large assortment of motion picture materials and flash powder; 1 typewriter case; 1 box containing records, maps and field material; 1 box containing Indian costume material; 1 box containing Indian reports and files; a large assortment of Indian negatives, transparencies; records and manuscript; 1 box containing Indian clippings with manuscript, descriptive thereof; 1 box containing Indian tents and camp equipment; large assortment of Indian reviews; 1 large assortment of portfolios and books of North American Indian; 4 bookcases and contents; large assortment of Indian baskets; pottery, Indian blankets and Indian curios.

V.

That the aforementioned property is worth the sum of *Ten Thousand* (\$10,000.00), and that the defendants refuse to deliver possession to the plaintiff herein.

VI.

That by reason of the wrongful withholding of said possession of said property, this plaintiff has been damaged in the sum of \$5,000.00, and will suffer other and greater damage.

VII.

That the said personal property aforementioned has not been taken by the defendants for a tax, assessment or fine pursuant to the statute, or seized

under execution or attachment against the property of this plaintiff.

WHEREFORE, plaintiff prays judgment against the defendants, and each of them, for the recovery of the possession of the said personal property, and in case possession thereof cannot be had, then, for judgment against the defendants [3] in the sum of \$10,000.00, the value thereof, and for the sum of \$5000.00 damages for wrongfully withholding possession of said property, and for its costs and disbursements in this action.

WRIGHT and WRIGHT,  
Attorneys for Plaintiff.

United States of America,  
Western District of Washington,—ss.

E. A. Wright, being first duly sworn, on his oath deposes and says:

That the plaintiff is a corporation, organized under the laws of the State of New York; that there is no officer within the State of Washington; that he is authorized as attorney, to make verification on behalf of the plaintiff, because the plaintiff is now within the State of Washington; that he is acquainted with the facts set forth in the complaint herein; knows the contents thereof, and believes the same to be true.

[Seal]

E. A. WRIGHT.

Subscribed and sworn to before me this 19th day of April, 1920.

SAM A. WRIGHT,  
Notary Public in and for the State of Washington,  
Residing in Seattle, Wn.

[Endorsed]: Filed in the United States District Court, Western District of Wash., Northern Division. Apr. 19, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [4]

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UNITED STATES OF AMERICA.

In the United States District Court for the Western District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,  
Defendants.

**Summons.**

The President of the United States of America,  
GREETING:

To the Above-named Defendants, Edward S. Curtis and Clara J. Curtis, Formerly Husband and Wife, and Curtis Studio.

YOU ARE HEREBY REQUIRED to appear in the United States District Court, in and for the Western District of Washington, Northern Division, within twenty days after the day of service of this summons upon you, exclusive of the day of service, and answer the complaint of the above-named

plaintiff, now on file in the office of the clerk of said court, in the City of Seattle, a copy of which complaint is herewith delivered to you; and unless you so appear and answer, the plaintiff will apply to the Court for the relief demanded in said complaint.

WITNESS, the Hon. EDWARD E. CUSHMAN, Judge of said Court, this 19th day of April, in the year of our Lord one thousand nine hundred and twenty, and of our Independence the one hundred and forty-fourth.

[Seal U. S. District Court]

F. M. HARSHBERGER,  
Clerk.

By \_\_\_\_\_,  
Deputy Clerk. [5]

**Marshal's Return to Summons.**

United States of America,  
Western District of Washington,—ss.

✓I hereby certify and return that I served the within Summons on the therein named Edward S. Curtis, by serving Willis B. Herr, his attorney, on April 19, 1920, by handing to and leaving a true and correct copy thereof with \_\_\_\_\_, personally, at Seattle, in said District, on the 20th day of April, A. D. 1920.

JOHN M. BOYLE,  
U. S. Marshal.  
By Thos. Waters,  
Deputy.



RETURN ON SERVICE OF WRIT.

United States of America,  
Western District of Wash.,—ss.

I hereby certify and return that I served the annexed Summons and Complaint on the therein named Clara J. Curtis, by handing to and leaving a true and correct copy thereof with her personally at Seattle, Wash., in said District, on the 20th day of April, A. D. 1920.

JOHN M. BOYLE,  
U. S. Marshal.

By Edwin R. Tobey,  
Deputy.

[Endorsed]: No. 5225. United States District Court, Western District of Washington, Northern Division. The North American Indian, Inc., Plaintiff, vs. Edward S. Curtis et al., Defendants. Summons. Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 21, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

In the United States District Court for the Western District of Washington, Northern Division.

No. 5225.

NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Answer of Clara J. Curtis.**

The defendant, Clara J. Curtis, answering the complaint of the plaintiff herein, alleges:

**I.**

She denies each and every of the allegations contained in paragraphs I, II, III, and IV of said complaint and the whole thereof.

**II.**

That she admits the allegation contained in paragraph V of this complaint that the property theretofore mentioned and described in paragraph IV of the complaint is worth the sum of Ten Thousand Dollars (\$10,000), but denies that she ever refused to deliver said property to the plaintiff herein.

**III.**

She denies each and every of the allegations contained in the VI paragraph of the complaint and the whole thereof; denies that by reason of any act



of the defendant, or at all, plaintiff has been damaged in any sum whatever or at all.

Said defendant further and affirmatively *answer* the complaint of plaintiff alleges:

I.

That the cause of action stated in the complaint of plaintiff [6] herein is barred by the provision of subdivision two of section 159 of Ballinger & Remington Code of the State of Washington.

WHEREUPON defendant prays that she may go hence without day and *that recover* and have rendered in her favor the verdict and judgment required by the statutes of the State of Washington in action for claim and delivery, including also the costs.

JOHN G. BARNES,

Attorney for Defendant, Clara J. Curtis.

State of Washington,

County of King,—ss.

Clara J. Curtis, being first duly sworn, on oath says: I am one of the defendants in the foregoing action; I signed the foregoing answer, that I have read the foregoing answer, know the contents thereof, and believe the same to be true.

CLARA J. CURTIS.

Subscribed and sworn to before me this 20th day of May, 1920.

JOHN G. BARNES,

Notary Public in and for the State of Washington.

I hereby designate Room No. 1017, White Building, 4th & Union Street, Seattle, Washington, as

the place where all subsequent papers herein, except writs and process, may be made upon the defendant Clara J. Curtis herein, and consent that service of all subsequent papers herein, except writs and process, may be made as the place hereinabove designated upon the said Clara J. Curtis.

Dated May 20, 1920.

JOHN G. BARNES,  
Clara J. Curtis' Attorney.

Service of within answer and receipt of copy admitted this 20th day of May, 1920.

WRIGHT & WRIGHT,  
Attorneys for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 20, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [7]

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United States District Court for the Western  
District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,  
Defendants.

**Separate Answer of Defendant, Edward S. Curtis.**

Comes now the defendant, Edward S. Curtis, by his attorneys, and for answer to the complaint herein alleges:

**I.**

Referring to Paragraph III of the complaint, this defendant denies that he was wrongfully or unlawfully in possession of the personal property described in the complaint, which he admits belongs to and is owned by the plaintiff, and he further denies that he wrongfully or unlawfully held possession of said property.

**II.**

Referring to Paragraph V, this defendant denies that the property described therein is worth the sum of Ten Thousand Dollars (\$10,000.00).

**III.**

Referring to Paragraph VI, this defendant denies that by reason of the withholding of possession of said property, the plaintiff has been damaged in the sum of Five Thousand Dollars (\$5,000.00) or in any other sum or amount whatsoever.

WHEREFORE, having fully answered, this defendant prays he be hence dismissed with his costs herein to be taxed.

HERR, BAYLEY & CROSON,

Attorneys for Defendant Edward S. Curtis. [8]

United States of America,

Western District of Washington,—ss.

Willis B. Herr, being first duly sworn, on oath deposes and says: That he is one of the attorneys

for the defendant, Edward S. Curtis; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true. That he makes this verification on the ground and for the reason that the said defendant, Edward S. Curtis, is temporarily absent from the county of King, State of Washington, and is therefore unable to verify this answer.

WILLIS B. HERR.

Subscribed and sworn to before me this 26th day of May, 1920.

[Notary Seal] OFELL H. JOHNSON,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Copy of the within answer received, and due service of same acknowledged this 26th day of May, 1920.

WRIGHT & WRIGHT,  
Attys. for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. June 21, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [9]

United States District Court, for the Western  
District of Washington, Northern Division.

No. 5225.

NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,  
Defendant.

**Amended Reply.**

Comes now the plaintiff and for amended reply  
to the answer of the defendant, Clara J. Curtis,  
says:

**I.**

Plaintiff denies each and every allegation set  
forth in Paragraph 1 of the defendant Clara J.  
Curtis' alleged affirmative answer, and each and  
every part thereof.

For further reply, plaintiff says:

**I.**

That the defendant, Clara J. Curtis, is estopped  
to plead the statute of limitations set forth in her  
answer, and to deny that the plaintiff is a corpora-  
tion organized under the laws of the State of New  
York, having enjoyed and received the benefits of  
the property of the plaintiff and dealt with it for a  
number of years.

WHEREFORE, having fully replied, plaintiff prays as by its complaint herein.

WRIGHT & WRIGHT,  
Attorneys for Plaintiff.

Received copy this 18th day of June, 1921.

JOHN G. BARNES,  
Attorney for Clara J. Curtis. [10]

State of ———,  
United States of America,  
Western District of Washington,—ss.

E. A. Wright, being first duly sworn, on his oath, deposes and says:

That the plaintiff is a corporation, organized under the laws of the State of New York; that there is no officer within the State of Washington; that he is authorized as attorney to make verification on behalf of the plaintiff, because the plaintiff is not within the State of Washington; that he is acquainted with the facts set forth in the amended reply herein; knows the contents thereof, and believes the same to be true.

E. A. WRIGHT.

Subscribed and sworn to before me this 18th day of June, 1920.

[Notary Seal] SAM A. WRIGHT,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 18, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [11]



United States District Court, for the Western District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Affidavit of Replevin.**

United States of America,  
Western District of Washington,—ss.

Elias A. Wright, being first duly sworn, on his oath, deposes and says:

I. That I am one of the attorneys for the plaintiff in the above-entitled action.

II. That the said plaintiff is the owner of and is lawfully entitled to the possession of the following described personal property:

1 motion picture re-wind; 2 boxes of lantern slides; 1 net; 2 boxes of phonograph records; 1 camp equipment; 1 box containing clippings, articles and reviews of the North American Indian; 1 Indian saddle; 1 phonograph; two bundles of 3 tents each; 1 tripod; a large cabinet full of reviews of North American Indian; 1 large assortment of motion picture materials and flash powder; 1 typewriter case; 1 box con-

taining records, maps and field material; 1 box containing Indian costume material; 1 box containing Indian reports and files; a large assortment of Indian negatives, transparencies; records and manuscript; 1 box containing Indian clippings with manuscript, descriptive thereof; 1 box containing Indian tents and camp equipment; large assortment of Indian reviews; large assortment of portfolios and books of North American Indian; 4 bookcases and contents; large assortment of Indian baskets; pottery, Indian blankets and Indian curios.

III. That the said property is in the possession of and wrongfully detained by the said defendants from the said [12] plaintiff.

IV. That the property has not been, nor any part thereof, taken for a tax, assessment or fine, pursuant to the statute, or seized under execution or attachment against the property of the said plaintiff.

V. That the actual value of the whole of said property is the sum of Ten Thousand (\$10,000.00) Dollars.

ELIAS A. WRIGHT.

Subscribed and sworn to before me this 19th day of April, 1920.

[Notarial Seal] SAM A. WRIGHT,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern



Division. Apr. 19, 1920. F. M. Harshberger,  
Clerk. By S. E. Leitch, Deputy. [13]

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COPY.

60469.

20,000.00.

In the United States District Court, for the  
Western District of Washington, Northern  
Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Bond for Replevin.**

WHEREAS, it is alleged by the plaintiff in the  
above-entitled action that the defendants therein  
have in their possession and wrongfully detain cer-  
tain personal property belonging to said plaintiff, to  
the possession of which the said plaintiff is lawfully  
entitled, of the value of Ten Thousand and no/100  
(\$10,000) Dollars;

WHEREAS, the said plaintiff, being desirous of  
having the said personal property delivered to it,  
has delivered to the United States Marshal of the  
Western District, Northern Division, the proper

affidavit, and required him to take the said property from said defendants:

NOW, THEREFORE, we, The North American Indian, Inc., as principal, and the United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of Maryland and authorized to transact the business of surety in the State of Washington, as surety, in consideration of the premises and of the delivery to said plaintiff of said property, do hereby undertake and acknowledge that we are jointly and severally bound to said defendants in the sum of Twenty Thousand and no/100 (\$20,000.00) Dollars (being double the value of said property, as stated in said affidavit), for the prosecution of the said action, for the return of said property to said defendants if return thereof be adjudged, and for the payment to said defendants of such sum as may from any cause be recovered against the said plaintiff.

WITNESS our hands and seal this 19th day of April, 1920.

THE NORTH AMERICAN INDIAN, INC.,

By ELIAS A. WRIGHT,

Atty.

UNITED STATES FIDELITY & GUAR-  
ANTY COMPANY,

D. H. McCOLLISTER,

Attorney in Fact.

[Corporate Seal of U. S. F. & G. Co.]

Executed in presence of

Approved:

JEREMIAH NETERER,  
Judge. [14]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 19, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [15]

---

United States District Court, for the Western District of Washington, Northern Division.

No. 5225.

NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,  
Defendants.

**Order Directing Issuance of Writ of Replevin.**

The above-entitled matter coming on regularly for hearing on the application of the plaintiff for an order directing the issuance of writ of replevin herein, and it appearing from the plaintiff's complaint herein on file and the affidavit in support thereof that the cause of action for replevin is stated therein, and it further appearing that the plaintiff has furnished good and sufficient bond to the defendants in this action, now, therefore, it is hereby

ORDERED that writ of replevin issue in this action directed to the marshal to take possession of the property.

Done in open court this 19th day of April, 1920.

JEREMIAH NETERER,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 19, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [16]

---

United States District Court, for the Western District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Writ of Replevin.**

To the United States Marshal, of the Above-named District, *READING*:

In the name of the United States of America, you are hereby commanded to take the personal property mentioned and described in the accompanying affidavit from the defendants and deliver the same to the plaintiffs, a bond having been duly filed by the

plaintiff to the defendants herein, unless before such delivery the defendants enter into sufficient bond for the delivery thereof to the plaintiff, if delivery be adjudged.

WITNESS the Honorable JEREMIAH NET-  
ERER, Judge of the said court, this 19th day of  
April, in the year of our Lord nineteen hundred and  
twenty, and of our Independence the 144th.

[Seal U. S. District Court]

F. M. HARSHBERGER,  
Clerk.

MARSHAL'S RETURN, WESTERN DISTRICT  
OF WASHINGTON.

I hereby certify and return that, on the 19th day  
of April, 1920, I served the within writ of replevin  
on the within named Edward S. Curtis, by serving  
Willis B. Herr, his attorney. And I took the per-  
sonal property listed on attached paper. Said per-  
sonal property now stored #64 Cobb Bldg., in  
charge of George W. Slade.

JOHN M. BOYLE,  
United States Marshal.

By Thos. Waters,  
Deputy U. S. Marshal. [17]

- 1 Motion Picture Re-wind.
- 2 Boxes Lantern Slides.
- 1 Camp Equipment.
- 1 Box Containing Clippings, Articles and Reviews  
of "North American Indian."
- 2 Bundles of Three Tents Each.

- 1 Large Cabinet Full of Reviews of North American Indian.
- 1 Large Assortment of Motion Picture Material and Flash Powder.
- 1 Typewriter Case.
- 1 Box Containing Records, Maps and Field Material.
- 1 Box Containing Indian Costume Material.
- 1 Box Containing Indian Maps and Files.
- 1 Large Assortment of Indian Negatives, Transparencies, Records, and Manuscripts.  
Assortment of Negative and Positive Plates  $6\frac{1}{2} \times 8\frac{1}{2}$ , Size Indian Subjects, Numbering from 1 to 38000, as Listed in Four Record Books of Corresponding Numbers.  
729 Negative and Positive Plates  $14 \times 17$ .  
51 Negative and Positive Plates  $18 \times 22$ .  
19 Negative and Positive Plates  $16 \times 20$ .
- 1 Box Containing Indian Clippings with Manuscript Descriptive Thereof.
- 1 Box Containing Indian Tents and Camp Equipment.
- 1 Large Assortment of Indian Reviews.
- 1 Large Assortment of Portfolios and Books of North American Indian.
- 16 Large Bound Portfolios.
- 19 Volumes of "North American Indian,"  $\frac{3}{4}$  Morocco.
- 6 Volumes of "North American Indian," in Cloth.
- 1 Package of Folio Prints.
- 1 Small Package of Prints.  
Assorted Portfolio Prints Unbound.



1 Volume of Indian Days Long Ago—In Cloth.

4 Bookcases and Contents.

1 Large Assortment of Indian Baskets, Pottery  
and Indian Curios.

I, Thos. Waters, the officer who executed the within writ, do swear that the above is a correct and detailed list of all property taken under the within writ.

THOS. WATERS,  
Deputy.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 21, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

#### MARSHAL'S AMENDED RETURN.

I hereby certify and return that, on the 19th day of April, 1920, I served the within writ of replevin on the within named Edward S. Curtis, by serving Willis B. Herr, his attorney, in the City of Seattle, Washington. And I took the personal property, located in Seattle, Wash., in said District, as listed above. Said personal property now stored #64 Cobb Bldg., in charge of George W. Slade.

JOHN M. BOYLE,  
United States Marshal.

By Thos. Waters,  
Deputy U. S. Marshal. [18]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 14, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

## RETURN ON SERVICE OF WRIT.

United States of America,  
Western District of Wash.,—ss.

I hereby certify and return that I served the annexed writ of replevin on the therein named Clara J. Curtis, by handing to and leaving a true and correct copy thereof with her personally at Seattle, Wash., in said District, on the 28th day of April, A. D. 1920.

JOHN M. BOYLE,  
U. S. Marshal.  
By Edwin R. Tobey,  
Deputy.

RETURN ON SUPPLEMENTAL SERVICE OF  
WRIT.

United States of America,  
Western District of Washington,—ss.

I hereby certify and return that I served the annexed writ of replevin and affidavit for replevin and a copy of the bond on the therein named Clara J. Curtis by handing to and leaving true and correct copy thereof with her personally at Seattle, in said District, on the 20th day of April, A. D. 1920.

JOHN M. BOYLE,  
U. S. Marshal.  
By Edwin R. Tobey,  
Deputy.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 11, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [19]



In the United States District Court, for the  
Western District of Washington, Northern  
Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Special Appearance and Motions to Dismiss of  
Clara J. Curtis.**

Comes now the above-named defendant, Clara J. Curtis, by John G. Barnes, her attorney, and appearing specially herein for the purposes of these motions only, and not appearing generally herein, but agreeing that if the special purposes for which this special appearances are made shall not be sanctioned or sustained by the Court, she will appear generally within the cause within the time allowed therefor *allowed* by law, or by order of the Court, or by stipulation of the parties, moves the Court:

1. To dismiss this action, and that she take her costs in this suit incurred, for the reason that as appears by the complaint of the plaintiff filed in the cause, that the residence of any of the defendants, and particularly the residence of this defendant, is not alleged in the complaint herein; nor is it alleged in the complaint herein that this defendant is a citi-

zen of the State of Washington, and therefore no diversity of citizenship exists, upon which basis alone the Court can have jurisdiction in this cause.

2. To quash and annul the writ of replevin issued in the cause on the 19th day of April, 1920, for the reason that this court was wholly without jurisdiction to issue said writ of replevin.

3. To quash and annul the execution of the writ of replevin issued in this cause and executed by the United States Marshal on the 19th day of April, 1920, for the reasons: 1. That the affidavit upon which said writ was issued did not allege the location of the property described [20] therein to be within the jurisdiction of this court; 2. That the bond upon which the writ of replevin was issued and executed by the marshal was not filed with the marshal of this district, nor ever approved by him; 3. That no service of the affidavit or bond under which said writ of replevin herein was issued and executed, was ever made upon this defendant.

WHEREFORE, this defendant prays that the writ of replevin issued herein, and its execution by the marshal, be both quashed and annulled, and said marshal ordered to forthwith return all the property he took under the writ of replevin to the place from whence he took it.

These motions are all based upon the files and records of this court in this cause.

JOHN G. BARNES,  
Attorney for Clara J. Curtis, One of the Defendants.

Service of within motions, etc., and receipt of copy admitted this 10th day of May, 1920.

WRIGHT & WRIGHT,  
Attorneys for Plaintiff.

I hereby designate Room No. 1017, White Building, 4th Ave. at Union Street, Seattle, Washington, as the place where all subsequent papers herein, except writs and process, may be made upon the atty. herein, and consent that service of all subsequent papers herein, except writs and process, may be made at the place hereinabove designated upon the said John G. Barnes.

Dated May 10th, 1920.

JOHN G. BARNES,  
Clara J. Curtis' Attorney.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 10, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [21]

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In the United States District Court, for the Western District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Order Denying Motion of Clara J. Curtis to Dismiss Action.**

This cause came on duly and regularly for hearing on the 17th day of May, 1920, on the special appearance and motions of the defendant Clara J. Curtis to dismiss the action, to quash the writ of replevin issued herein, annul its execution by the marshal, and order him to forthwith return all the property he took under said writ of replevin to the place from whence he took it. The plaintiff appeared by Messrs. Wright & Wright, its attorneys, and the defendant Clara J. Curtis appeared by John G. Barnes, her attorney. After argument by the respective counsel, the Court being fully advised in the premises, it is by the Court

ORDERED, that the said motion of the defendant Clara J. Curtis to dismiss this action be, and the same is hereby denied, and that the plaintiff be, and it is hereby permitted to amend its complaint herein by interlineation in the original on file herein. It is further

ORDERED, that the motions of the defendant Clara J. Curtis to quash and annul the writ of replevin, and the execution thereof by the United States Marshal, issued and executed on the 19th day of April, 1920, be, and each of them is, hereby denied.

To which rulings and orders of the Court, and to each and every of them, the defendant Clara J. Curtis, by her attorney, excepted, and her exception is hereby allowed.

It is further ORDERED that the foregoing be made and entered [22] as of the 17th day of May, 1920.

Done in open court this third day of January, 1921.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 17, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [23]

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United States District Court, Western District of  
Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIANS,  
Plaintiff,

vs.

EDWARD S. CURTIS, CLARA J. CURTIS, and  
CURTIS STUDIO,

Defendants.

**Trial Showing Empanelment of Jury.**

Now, on this 5th day of November, 1920, this cause comes on for trial with Wright & Wright and A. J. Falknor, attorneys for plaintiff, and John G. Barnes and Herr Bayley & Croson, appearing for defendants. Both sides being now ready to proceed, the following jurors are selected, being twelve good and lawful men, sworn and empaneled as fol-

lows: P. A. Hallberg, R. M. Evans, G. G. Startup, Franz Ritchter, Fred Taggart, W. D. Allen, Harold E. Pearce, V. G. Gilbreath, J. B. Shaner, Geo. E. Patton, Wm. V. S. Robb and J. J. Stockand. Opening statement is made by counsel for plaintiff. Witnesses for plaintiff being duly sworn and examined are Lewis Albert and W. Albee. Plaintiff's exhibits, 35 in number, and Defendants' Exhibit "A" are introduced in evidence. It now being twelve o'clock A. M. recess is declared by the Court and the jury, being duly cautioned and admonished, it is adjourned till 2 P. M. Court again comes into session, all parties being present and all jurors present and in their box, trial is now resumed. Witnesses for plaintiff being duly sworn and examined are: Agness Shorthill, Lewis Albert (recalled), B. S. Patton, Jno. G. Barnes, W. B. Herr and Edward S. Curtis. Plaintiff rests. Defendant makes opening statement. Lewis Albert, witness for defendant is duly sworn and examined. Defendant rests. Jury is excused for motion. Whereupon motion is made by plaintiff for instructed verdict. Whereupon it is argued and said cause is continued until Tuesday. Jury in this cause is excused until Tuesday, after being duly cautioned and admonished.

Journal #8, Page 491. [24]



United States District Court, for the Western District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC., a Corporation,

Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Petition to Add Additional Plaintiffs.**

Comes now E. S. Pegram, a citizen and resident of the State of New York, and Gutson Borglum, a citizen and resident of the State of Connecticut, and petition the Court as follows:

**I.**

That they are the sole and only directors and Trustees of The North American Indian, Inc., a corporation, the plaintiff herein.

**II.**

That they ask to be added as plaintiffs herein for the purpose of protecting the property and rights of the plaintiff herein.

WHEREFORE petitioners ask that they be added as plaintiffs herein.

WRIGHT and WRIGHT and  
POE and FALKNOR,

Attorneys for Petitioners.

United States of America,  
Western District of Washington,—ss.

Elias A. Wright, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the petitioners herein; that he makes this verification for and on behalf of the petitioners herein on the ground and for the reason that they are absent from the State of Washington; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

ELIAS A. WRIGHT. [25]

Subscribed and sworn to before me this 8th day of November, 1920.

[Notary Seal] SAM A. WRIGHT,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 9, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [26]



United States District Court, for the Western District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC., a Corporation,

Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Order Adding Additional Plaintiffs.**

IT IS HEREBY ORDERED, that E. S. Pegram, a resident of the State of New York, and Gutson Borglum, a resident of the State of Connecticut, being the sole directors of the plaintiff herein, are hereby added as plaintiffs in the above action.

Done in open court this 9th day of November, 1920.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 9, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [27]

United States District Court, for the Western District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC., a Corporation,

Plaintiff,

vs.

E. S. PEGRAM and GUTSON BORGLUM,  
Additional Plaintiffs,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

### **Verdict.**

We, the jury in the above-entitled cause, do hereby find that the plaintiffs are the owners of and entitled to the possession of all of the property replevined by the Marshal, now located in Room 64 Cobb Building, Seattle, Washington, except the following:

- |        |  |              |
|--------|--|--------------|
| No. 1. | Mimeograph .....                               | No value     |
| No. 2. | Three printing-frames.....                     | Value \$5.00 |
| No. 3. | Small box containing cancelled<br>checks ..... | No value     |
| No. 4. | One box containing portrait<br>proofs .....    | No value     |
| No. 5. | One box containing fishnets....                | Value \$2.00 |

No. 6. One box containing burlap.....Value \$2.50

No. 7. Twenty-nine large negatives of

Roosevelt family.....Unknown value

One small Roosevelt negative

Five negatives of women [28]

One red pocketbook, about 150

years old.....Unknown value

Being instructed by the Court so to do.

W. D. ALLEN,

Foreman.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 9, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [29]

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United States District Court, for the Western District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC., a Corporation,

Plaintiff,

E. S. PEGRAM and GUTSON BORGLUM,  
Additional Plaintiffs,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Judgment on the Verdict.**

The above-entitled matter having come on regularly for hearing before the Honorable E. E. Cushman, Judge of the above-entitled court, on the 5th day of November, 1920, in the Federal Court Building at Seattle, Washington, in the above-entitled District, before a jury of twelve, good and *qualified chosen* from the District, the plaintiffs appearing with their witnesses and attorneys, Elias A. Wright of the firm of Wright & Wright, and A. J. Falknor of the firm of Poe & Falknor; and the defendant, Edward S. Curtis, appearing in person and by his counsel, W. B. Herr, of the firm of Herr, Bayley & Croson; and the defendant, Clara J. Curtis, appearing in person with her witnesses and attorney, John G. Barnes; and evidence having been introduced by the plaintiffs to substantiate their cause of action and the defendant, Clara J. Curtis, in support of her defense thereto—the defendant, Edward S. Curtis, offering no testimony; and at the close of all of the testimony, the plaintiff, The North American Indian, Inc., a corporation, moved the Court for an instructed verdict for all of the property seized by the Marshal, as shown by the writ of replevin herein and the Marshal's return [30] thereon and now located and situated in Room 64 Cobb Building in Seattle, King County, State of Washington, in the District of the United States District Court above entitled; thereafter the Court, on the application of E. S. Pegram and

Gutson Borglum, as directors and trustees of the plaintiff corporation, they were added as additional plaintiffs under order of the Court herein jointly with the original plaintiff, and thereafter the Court duly considered—after argument of counsel—the motion of the plaintiffs for an instructed verdict herein, and granted the same, and directed the jury to return a verdict for the plaintiffs for all of the property replevined by the plaintiff and seized by the marshal and now located in Room 64 Cobb Building, Seattle, King County, Washington, in the above-entitled Federal District, save and except certain property as shown by the verdict, the motion of the defendant Clara J. Curtis having been denied and her exception allowed,

NOW, THEREFORE, in pursuance of said motion and directed verdict heretofore duly returned and filed in this court by direction of this Court, it is hereby

ORDERED, ADJUDGED AND DECREED that the plaintiffs are the owners of and entitled to the possession of all of the property replevined by the plaintiff and seized by the Marshal and now located in Room 64, Cobb Building, in Seattle, King County, Washington, in the above-entitled Federal District, save and except the following:

- |        |  |              |
|--------|--|--------------|
| No. 1. | Mimeograph .....                               | No value     |
| No. 2. | Three printing-frames.....                     | Value \$5.00 |
| No. 3. | Small box containing cancelled<br>checks ..... | No value     |
| No. 4. | One box containing portrait<br>proofs .....    | No value     |

- No. 5. One box containing fishnets...Value \$2.00  
 No. 6. One box containing burlap....Value 2.50  
 No. 7. Twenty-nine large negatives of  
       Roosevelt family..Unknown value [31]  
       One small Roosevelt negative  
       Five negatives of women  
       One red pocketbook, about 150

years old .....Unknown value  
 which said excepted property the plaintiffs are hereby ORDERED to return to the Curtis Studio, the place from whence it was seized, or, in the event of their failure so to do, that they pay to the defendants the sum of nine and 50/100 (\$9.50) Dollars, the value of said property, and it is further

ORDERED, ADJUDGED and DECREED, the plaintiffs having waived their costs as against the defendants as a condition for the adding of the additional plaintiffs, E. S. Pegram and Gutson Borglum, that none of the parties recover costs as against the other herein.

Done in open court this 20th day of December, 1920.

EDWARD E. CUSHMAN,

Judge.

Receipt of a copy of the within form of judgment service admitted this 9th day of Nov. 1920.

JOHN G. BARNES,

Attorney for Deft. Clara J. Curtis.

HERR, BAYLEY & WILSON,

Attys. for Edw. S. Curtis.



[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 20, 1920. F. M. Harshberger, Clerk. S. E. Leitch, Deputy. [32]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Bill of Exceptions.**

JOHN G. BARNES,  
Attorney for Defendant Clara J. Curtis,  
507 Marion Building, Seattle, Washing-  
ton. [33]



In the United States District Court for the Western District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Bill of Exceptions Proposed by Defendant Clara J.  
Curtis.**

BE IT REMEMBERED, that the above-entitled cause came on for trial on the fifth day of November, 1920, being one of the days of the November term of said Court, before the Hon. Edward E. Cushman, one of the Judges of said court, and a jury impaneled. The plaintiff appeared by its attorneys and counsel, Elias Wright, of Wright & Wright, and A. J. Falknor, of Poe & Falknor; the defendant, Edward S. Curtis, appeared in person and by Willis B. Herr, of Herr, Baley & Croson, his attorneys and counsel, and the defendant Clara J. Curtis appeared in person and by John G. Barnes, her attorney and counsel.

The plaintiff to maintain its case offered the following evidence, to wit:

**Testimony of Lewis Albert, for Plaintiff.**

LEWIS ALBERT, a witness called by plaintiff, being first duly sworn, was interrogated by A. J. Falknor, attorney for plaintiff, and testified:

“I reside in New York City. I am the manager of the North American Indian. I have held the position of manager for about ten years. I am familiar with the signatures of Edward S. Curtis, Mr. Morris and F. Gordon Brown. The signatures on the instrument you show me are those of Edward S. Curtis, Robert C. Morris, who was the vice-president of the corporation at that time, and F. Gordon Brown, who was secretary at that time.”

Mr. FALKNOR.—We offer in evidence the bill of sale dated the 21st day of December, 1909. [34]

The COURT.—It may be admitted.

Mr. BARNES.—I would like the privilege of examining it.

The COURT.—You have been all over this at the other trial, and I think you should be able to make your objection promptly without taking time to examine the papers. You have already examined them thoroughly.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Thereupon the document referred to was admitted in evidence, marked Plaintiff's Exhibit 1, and read to the jury by Mr. Falknor.

Mr. FALKNOR.—Mr. Albert, I show you this instrument which we will have marked Plaintiff's

(Testimony of Lewis Albert.)

Exhibit 2; I will ask you whose signature is attached to that instrument as the maker.

A. Edward S. Curtis.

Q. That is the defendant in this case?

A. Yes, sir.

Mr. FALKNOR.—We offer this in evidence as one of the assignments of the copyright to the plaintiff corporation.

Mr. BARNES.—The defendant, Clara J. Curtis, objects to the introduction of this exhibit for the reason that it is immaterial and irrelevant, and that there is no issue raised in this case as to the ownership of the copyrights. I wish to argue that.

The COURT.—I have heard from you enough on that. This assignment of copyright may tend to identify what passed under the bill of sale and contract. The objection is overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Mr. BARNES.—May I say one word to your Honor?

The COURT.—Yes, sir.

Mr. BARNES.—Might I be allowed to suggest to your Honor that a copyright is not subject to the action of replevin at all. [35]

The COURT.—As I intimated, the copyright may identify the plates, the positives and negatives, that did not pass under the bill of sale.

Mr. BARNES.—Note an exception.

(Testimony of Lewis Albert.)

The COURT.—Exception allowed. *I* may be admitted in evidence, and marked Plaintiff's Exhibit 2.

Thereupon the paper referred to was admitted in evidence, and marked Plaintiff's Exhibit 2.

The plaintiff thereupon identified the signature of Edward S. Curtis upon each of Plaintiff's Exhibits 3, 4, 5 and 6, by the witness, and offered the same in evidence. The defendant Clara J. Curtis objected to the admission in evidence of each and every of said exhibits, upon the grounds that the same were incompetent, irrelevant and immaterial, and did not go to any of the issues raised in this case, but the Court overruled each and every of said objections, each of said documents were admitted in evidence, and marked Plaintiff's Exhibit 3, 4, 5, and 6, respectively, to which rulings of the Court, in each and every instance, the defendant Clara J. Curtis, by her attorney, excepted, and her exceptions were allowed by the Court.

Mr. FALKNOR.—I show you this, and ask you whose signature is to that?

A. E. S. Curtis.

Q. The defendant in this case? A. Yes, sir.

Mr. FALKNOR.—We offer this in evidence, and ask that it be marked Exhibit 7.

Mr. BARNES.—The defendant Clara J. Curtis objects to the introduction of this instrument, for the reason that it is incompetent, immaterial and irrelevant, and goes to none of the issues in this case. It purports to have been made on the 29th

(Testimony of Lewis Albert.)

day of September, 1920. This action was instituted in this court on the 19th day of April, 1920. Certainly an assignment made five months [36] after the commencement of this action cannot have any bearing.

The COURT.—Objection overruled. Exception allowed. It may be admitted.

Thereupon the paper referred to was admitted in evidence, and marked Plaintiff's Exhibit 7.

Mr. FALKNOR.—I now offer in evidence a certified list, showing the dates and title of the various copyrights, and filing of the same for copyrights by the registrar in the copyright office.

Mr. BARNES.—We object to the introduction of this so-called list of copyrights, for the following reasons: First, because it is incompetent, irrelevant and immaterial. It does not go to any of the issues raised by the pleadings in this case, and secondly, because it is not properly authenticated, or is not an emplied copy such as is permitted to be introduced in evidence under the statutes of the United States relating thereto.

The COURT.—I will overrule this objection.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

The witness was thereupon interrogated by Mr. Barnes upon cross-examination, and testified:

"Since about December, 1909, I have been continuously, and am now, the manager of the plaintiff corporation in this case, I handle everything that

(Testimony of Lewis Albert.)

pertains to the New York office, and the New York office is the only office there is."

Mr. BARNES.—Who appointed you manager?

Mr. FALKNOR.—I object to that.

The COURT.—Objection sustained.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Q. How did you acquire the office of manager of the corporation?

Mr. FALKNOR.—I object to that as being immaterial. [37]

The COURT.—Objection sustained.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Q. Who employed the Messrs. Wright & Wright to bring this action?

Mr. WRIGHT.—I object to that as being immaterial.

The COURT.—Objection sustained.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Q. You testified in this case on its former trial, didn't you, Mr. Albert?

A. Yes, sir.

Q. You came from New York City for that purpose, did you not?

Mr. WRIGHT.—I object to that as being immaterial.

The COURT.—Objection sustained.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.



(Testimony of W. Albee.)

Q. Mr. Albert, you paid your expenses when you came out here?

Mr. WRIGHT.—I object to that as being immaterial in every respect.

The COURT.—Objection sustained. Exception allowed.

**Testimony of W. Albee, for Plaintiff.**

W. ALBEE, a witness called by plaintiff, being duly sworn, was interrogated by A. J. Falknor, attorney for plaintiff, testified:

“I am a photographer. Place of business, 1006 Lowman Building.”

Q. Since the other trial, were you appointed by his Honor, the Judge—

Mr. BARNES.—I object to that question. It is not fair and it is not right. It is not legal. He has no right to make it. I think the records of this court will disclose it.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Q. Since the other trial, I would like to ask you if you were [38] selected by his Honor, and appointed by his Honor, to make a check of the photographs, plates, and material, the title to which is involved in this controversy?

A. Yes, sir.

Mr. BARNES.—I object to that.

The COURT.—I think the order as to the examination of those in the custody of the marshal, that



(Testimony of W. Albee.)

you have a right to pass on, and say they are in controversy here. I think you better confine the question to those in possession of the marshal.

Mr. FALKNOR.—I meant that. It is the material, I understand, that is in the possession of the marshal, or in control of the marshal at room 64 Cobb Building.

Mr. BARNES.—There is not any material, and has not been since the 19th day of May, in the possession of the marshal.

The COURT.—Repeat the question.

Q. I will ask you if since the other trial, you were appointed by his Honor to tabulate, and identify the property that is in the possession of the marshal in this case, that is situated in room 64 of the Cobb Building?

Mr. BARNES.—I object to that question as being incompetent, irrelevant and immaterial, and not the best evidence.

The COURT.—The objection is overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed. Proceed with the examination.

The witness then testified:

“I proceeded to carry out the Court’s order to the best of my ability. I had there when I made the check the assignment of the various copyrights. I had certified copies of Exhibits 1 and 2, and had Exhibits 4, 5 and 6, and other data.”

Mr. FALKNOR.—We offer these two in evidence as connecting up Mr. Albee’s testimony.

(Testimony of W. Albee.)

They are certified copies of Exhibits 2 and 3 which we have already introduced in evidence. [39]

Mr. BARNES.—The defendant Clara J. Curtis objects to this as being incompetent, irrelevant and immaterial.

The COURT.—Objection overruled. Exception allowed.

Paper referred to admitted in evidence, and marked Plaintiff's Exhibits 8 and 9.

Q. Mr. Albee, will you explain, with this information in your possession, what you did?

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

A. The disposition that I made of the negatives?

Q. Yes, sir. Tell what you found, and what you did.

A. I was notified by the corporation that I have been appointed by the Court to check certain negatives in a certain room in the Cobb Building, together with certain data which I was given at the same time, together with the key to the room in the building, room 64 of the Cobb Building, and, owing to the thousands of negatives which it was necessary to check, I was unable to handle all of the negatives personally, and I engaged an assistant to help me in the physical handling of the glass, and the assistant and myself, over a period of three months, checked the negatives which were in the Cobb

(Testimony of W. Albee.)

Building, comparing the negatives with the typewritten lists which were furnished us, and as the negatives tallied with the lists, we would make check marks on the lists, and segregate those especial negatives. The negatives were bound, as the negatives tallied, I would make a check mark on my list, place my initials on the negatives, and as the negatives so accumulated, packages of a dozen, ten or twelve, in some instances, they were bound with adhesive tape and put in another portion of the room from the portion of the room in which the unchecked negatives were. [40] The checked negatives are now in room 64 of the Cobb Building, and in three situations. There is a cupboard in the room which is filled to its capacity with negatives, each negative having my initial on it, and being bound with Addison's adhesive tape, and upon a shelf in the same room, without doors, there are more negatives, and up in the adjoining room, separated by a temporary partition, are negatives which are not bound, because the time did not permit the binding of all the negatives before court opened, and consequently those, no doubt, have my initials on them, but are not bound. By checked negatives I mean those which in my opinion, and as far as my honest and earnest endeavor goes, tally with the typewritten lists which were furnished, the tally and number of the negatives. Those that correspond with the detailed lists furnished me on the assignment with these copyrights. I compared all the negatives with the numbers on Exhibit 8, and in

(Testimony of W. Albee.)

every instance where there was not a negative corresponding with the number, I will say this, that the negatives which were checked can be—can all be found on the list; but this list has many numbers which are not checked, because I was unable to locate the negatives.

Q. The negatives that are there are included in these lists, but this list is more extensive than the negatives, but whatever negatives are checked are in this list?

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant, and leading.

The COURT.—It was leading, but the witnesses answer had been ambiguous in the beginning, so I will allow the question to straighten up what he answered.

Mr. BARNES.—I have my exception, of course.

The COURT.—Exception allowed.

A. Yes, sir.

Q. I will ask you if there are photographs, negatives, positives, plates there, that are not copyrighted. [41]

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant, no sufficient foundation laid for this witness to say whether they are copyrighted, or not.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

A. There are certain negatives contained in the room which are not copyrighted, but as far as my

(Testimony of W. Albee.)

judgment in the matter is concerned, I have checked no negatives and plates, and my initials are on no negatives which are not copyrighted.

Q. Did you find any negatives, or positives, in the property that is stored there that is not of an Indian character?     A. Yes, sir, I did.

Q. What did you find?

A. I found certain negatives of Theodore Roosevelt.

Q. How many?

A. I didn't count them, because I was told by the Court that the Indian negatives are those in question. I saw them segregated in a box, but I did not examine them, except to ascertain the nature of the negatives. Outside of those I did not find any negatives or positives, or plates, or material, that was not of an Indian character, or nature. I have heard of the North American Indian Publication, and have noticed magazine articles dealing with it. I have not followed it carefully, or extensively, at all.

Q. Did you find any material there that was not consistent, or adapted to such work?

A. No, sir.

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant.

The COURT.—The objection is overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

A. No, sir. [42]

The witness was thereupon interrogated by Mr.



(Testimony of W. Albee.)

Barnes, upon cross-examination, and testified as follows:

“I was given the key to room 64 in the Cobb Building by Mr. Elias Wright, attorney for the North American Indian Company. Mr. Wright informed me that I had been appointed by the Court. I think it was in July. Since that time I have been in constant consultation with Mr. Wright. He supplied me with the lists and the data. I think my initial visit to room 64 was in July, at which time I made a cursory examination of the contents of the room, but did not begin the actual checking until about two weeks later.”

Q. Did you find anybody else in possession of the property in room 64 when you were in there?

Mr. FALKNOR.—I object to that as being immaterial.

The COURT.—Objection overruled.

A. The work was done, my actual checking of the work, in the evening. I was given one key, but I have no reason to believe that there weren't other keys in existence.

Q. Isn't it a fact that you found a man, by the name of N. Lennes, in possession of room 64, and of the material in there?

A. He was in the room, yes. He and I have been in the room at the same time.

Q. And you had a conversation with him with relation to this property?

Mr. FALKNOR.—What difference does that

(Testimony of W. Albee.)

make, after we own the property, if there were forty people in it?

The COURT.—The objection is sustained.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Q. You did find N. Lennes there, did you?

A. He was in the room.

Q. He had a key to the room, didn't he?

A. Yes, sir, as far as I know. [43]

Q. And you found a dark room there, didn't you?

Mr. FALKNOR.—I object to that.

The COURT.—Objection sustained.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Q. You found a large supply of chemicals there, didn't you?

Mr. FALKNOR.—I object to that.

The COURT.—Is this something that you claim was done that should not have been done?

Mr. FALKNOR.—No, I don't think so.

The COURT.—The objection is sustained. Exception allowed.

Q. You found an 11x14 camera there, didn't you?

Mr. FALKNOR.—Do they claim the camera? There is no controversy over that. I object to that as being immaterial.

The COURT.—Do you claim it?

Mr. WRIGHT.—No.

The COURT.—Was it taken; was it something that was taken?



(Testimony of W. Albee.)

Mr. FALKNOR.—No, I don't think so. I don't think it is claimed by anybody.

The COURT.—The objection is sustained.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Q. You found a large assortment of photographic trays, photographic trays, developing trays, didn't you?

A. There was no such paraphernalia in the room. I imagine there might have been among them printing trays. The room was a sort of a heterogeneous mass of material.

Q. There are three rooms, all entered by door 64, and that is the only entrance to them?

A. Yes, sir. In the strict interpretation of the term, there is only one room, and temporary partitions running to the ceiling.

Q. Making three different rooms? [44]

A. Yes, sir.

Q. And this camera, and this dark room, and those negatives and chemicals were in the north room, were they not?

Mr. FALKNOR.—I object to that as being immaterial.

The COURT.—Objection sustained. Exception allowed as to those chemicals.

The witness, on cross-examination, further testified as follows:

“That he took the data furnished him by Mr. Wright, and segregated the negatives that corresponded to the data that he had, so far as it lay in

(Testimony of W. Albee.)

his power to accomplish such segregation. It would be impossible for me to say how many negatives were in that room. Neither did I check the number that I segregated. A photographic negative in the commonly accepted sense of the term, is a plate which has been exposed in a photographic camera, and subjected to chemical action to render it sensitive, and to bring out a latent image thereon. Developing is only one of the processes through which it passes to become a negative. A photographic plate might be one of three things. In the broad sense of the term it is any piece of glass which has been sensitized with the chemical emulsions to render it sensitive to light. Photographers, in speaking of negatives, usually class a plate which comes from the stock house as a plate. Roughly speaking, either negative, or in some instances what is technically known as a transparency, is also a plate."

**Testimony of Agnes Shortall, for Plaintiff.**

AGNES SHORTALL, a witness called by plaintiff, being first duly sworn, was interrogated by A. J. Falknor, attorney for plaintiff, and testified:

"I was employed at the Curtis Studio, but not by Mrs. Curtis. It will be two years on the first of January, coming, when I was employed there, for a year and a half."

Q. I will ask you if they were in possession of any materials [45] or plates, or properties of the North American Indian?

(Testimony of Agnes Shortall.)

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant, and leading question, and calling for a conclusion of the witness, and furthermore, she has testified that she was not in the employ of Mrs. Curtis, and never was.

The COURT.—The objection is overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Q. Where was the property of the North American Indian located?

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant, and there is no foundation laid that this witness knew that the North American Indian had any property.

The COURT.—The objection is overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

A. Different places in the studio on exhibit.

Q. State whether or not there was any general place in the studio where the property of the North American Indian was generally segregated from the balance of the studio.

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant, and leading.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

The witness then testified:

“The Indian negatives were kept separate from the studio negatives. They were kept on the second floor, and in a sort of Indian cabinet. All of

(Testimony of Agnes Shortall.)

the negatives were kept there, and the curios were kept in a cabinet, most of them, and the baskets were arranged around the studio for display purposes. The volumes of the *North American Indian* and portfolios were kept in the studio.

Q. I will ask you whether there was any common understanding [46] around the studio as to whose property this was.

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

A. Oh, yes, sir.

Q. What was the common understanding?

A. That all the material belonged to the *North American Indian*.

### **Testimony of Lewis Albert, for Plaintiff (Recalled.)**

LEWIS ALBERT, being recalled by plaintiff, was interrogated by Mr. Falknor, attorney for plaintiff, and testified as follows:

Q. I asked you to produce us, so that the jury can catch the idea of the exact nature of this work, the eleven volumes that have been published, and the eleven portfolios that have been published. Did you do that?

Mr. BARNES.—I object to that on the ground that it is not in issue in this case. It does not make any difference whether they published one volume,

(Testimony of Lewis Albert.)

or forty, or whether there is to be twenty more, or not.

The COURT.—The conduct of the parties disclosed by this work, the character of the books that went into it, and how they compare with these negatives that are left, and in dispute,—it might tend to show the character of that property. The objection is overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

(No response from the witness.)

Q. Will you show the jury the eleven volumes that have been published by the North American Indian?

Mr. BARNES.—I make the same objection.

A. The volumes are similar to the books here.

Mr. FALKNOR.—We offer in evidence, and we reserve the right [47] to withdraw them, these eleven volumes designated from one to eleven, inclusive, and let the clerk give them some appropriate reference.

The CLERK.—They may be marked Plaintiff's Exhibits 10-A, 10-B, 10-C, 10-D, 10-E, and so on.

Q. Now, the eleven volumes are those that I am showing the jury samples of. How many more are you required to produce to complete your set to the subscribers?

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

(Testimony of Lewis Albert.)

The COURT.—Exception allowed.

A. Our contract calls for twenty volumes, and twenty portfolios; that would make nine additional yet to be published.

Q. Accompanying each of these volumes is what you call— A. A portfolio.

Q. Each one of these portfolios accompanies the respective volumes, that is correct, is it?

A. Yes, sir.

Q. Will you show the jury the photographs that are involved in the one, so that they can get an idea of what the character of these is?

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Mr. FALKNOR.—Take your time and show the jury the whole business.

Thereupon the witness exhibited to the jury numerous pictures taken from the portfolios, and gave the names of the pictures thus shown. [48]

Q. That is sufficient to give the jury an idea of the character of these photographs and portfolios. You may explain to the jury generally how these respective volumes, and portfolios, relate if they do, to any particular tribe, or group of tribes?

Mr. BARNES.—I object to that as incompetent, immaterial and irrelevant.

The COURT.—The objection is overruled.

A. The general custom, the number of tribes



(Testimony of Lewis Albert.)

treated, depends upon the size of the tribe. In many instances a tribe is treated in one volume and portfolio. The volume containing the checked material, and small illustrations, and the portfolio containing the more important phases of Indian life. In the case of the first volume, it treats with two tribes, the Navajo and the Apache.

Q. What amount of money has been expended in the production of the volumes to date, if you know?

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

A. About \$850,000.00.

Q. I will ask you whether or not the plates that are in the possession of the marshal are essential and necessary to the completion of this work

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant, and calling for a conclusion of the witness. As to these plates being in the possession of the marshal, when they are not.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

A. They are absolutely essential to the completion of the [49] work. There is considerable material there in the way of negatives that will cover tribes not yet included in any volume.

Q. And could these negatives be reproduced?



(Testimony of Lewis Albert.)

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

A. In the majority of the instances they positively could not be duplicated.

On cross-examination the witness LEWIS ALBERT, being interrogated by Mr. Barnes, testified:

“I have not employed a man named Lennes to duplicate these negatives. I did employ him to make positives of some of these negatives, and he did make positives of some of them. I do not know whether or not a negative could be made from a positive.”

Mr. FALKNOR.—I offer these portfolios in evidence.

Mr. BARNES.—I object to them as being incompetent, immaterial and irrelevant.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed. The portfolios will be admitted in evidence.

Thereupon the portfolios were admitted in evidence, and marked Plaintiff's Exhibits 11-A, 11-B, 11-C, etc.

**Testimony of B. S. Patten, for Plaintiff.**

B. S. PATTEN, a witness called by the plaintiff, was interrogated by Mr. Falknor, its attorney, and testified as follows:

Q. Were you ever employed by the defendants, or either of them?

To which witness replied that he was, that he was employed at the studio at Fourth and University two years and a half ago. That he remained there two years, ceasing his connection on the 6th day [50] of May, 1920. That he was there at the time the marshal took possession of the property involved in this lawsuit. That prior to that time he had been connected with the studio approximately two years.

Q. I will ask you, Mr. Patten, if in the studio there, the material which the marshal took possession of was generally separated and segregated from the balance of the property in the studio?

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant, and leading.

The COURT.—It is leading, but I do not know of any other way to get at it. The objection is overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

A. Yes, sir; it was.

Q. Explain to the jury how it was kept there.

A. The Indian negatives were kept in cases by themselves, and the portfolios and books were kept in a case by itself, and the baskets, most of them,

(Testimony of B. S. Patten.)

and the material used in gathering the books, which were there in the studio, were kept in boxes, stored away out of the way, and in a way not used by the studio, with the exception of the few of the better baskets, and souvenirs, or trinkets, that we used for display purposes in the studio.

Q. What was the common understanding around the studio as to whose property it was?

A. The North American Indian.

Q. The plaintiff in this case? A. Yes, sir.

Mr. BARNES.—I want to object to that question as being incompetent, immaterial and irrelevant.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed. [51]

Q. *Were you* these in possession at any time when a demand was made for the turning over of this property?

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant, and a leading question.

The COURT.—The objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

A. Yes, sir; I was.

Q. Explain to the jury.

A. Mr. Wright came up to the studio, and talked first to Miss Curtis, who was manager of the studio, and she in turn called me, and he made a demand, and wanted to move the North American Indian

(Testimony of B. S. Patten.)

material, negatives, and everything, out of the studio.

Q. Mr. Wright representing the plaintiff.

A. Mr. Wright representing the plaintiff.

Q. That was before the marshal came into possession?      A. Yes, sir.

Q. Did you surrender it to him?

A. No, sir, we did not.

Q. But he did demand it?      A. Yes, sir.

Q. Now, that property at that time was located here in Seattle, King County, Washington?

A. Yes, sir.

Q. And he demanded the same property that the marshal subsequently came and took?

Mr. BARNES.—I object to that as being incompetent, immaterial, irrelevant, and leading, and no foundation shown that the witness knew.

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed. [52]

A. Yes, sir, he demanded the property of the North American Indian. I will have to qualify that and say that we didn't know positively all the property of the North American Indian.

Q. But the property that was generally understood to be the North American Indian property was the property that he demanded, and the property that the marshal took?      A. Yes, sir.

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant, and leading.

(Testimony of B. S. Patten.)

The COURT.—It is leading. It is answered, however. The objection is overruled.

The witness then testified that at the time, to the best of his knowledge, Mrs. Curtis was living in the University section in the city of Seattle, King County, State of Washington, and that to his knowledge she had been living there at least a year. That at the time Mr. Wright came down and demanded this property Miss Beth Curtis was in charge of the studio. That she was there at the time the demand was made. That the demand was made on Miss Beth Curtis, who called the witness, and wanted to know what they should do about it.

On cross-examination by Mr. Barnes the witness testified:

That he would say that the demand made by Mr. Wright was made about three or four weeks before the goods were replevined. That he did not know the exact date the goods were replevined, but would say it was in April, and that the demand was made around the latter part of March. That he would not say definitely that the demand was not made after the 6th day of April, 1920. That Mr. Wright came up to the studio, and just what he said was: "I am representing the North American Indian," to Miss Curtis, "And they instructed me to come and get their property." He simply said: "I come up here and want this property, it belongs to the North American Indian." That the witness told Mr. Wright that so far as [53] he was concerned that he could not have the property. That

(Testimony of John G. Barnes.)

part of the conversation took place on the first floor, and part of it on the third floor, of the studio.

Mr. FALKNOR.—For the purpose of showing that a seizure was made in this county, I offer the marshal's return in evidence.

The COURT.—It may be admitted in evidence.

Thereupon the marshal's return was admitted in evidence, and marked Plaintiff's Exhibit 12.

**Testimony of John G. Barnes, for Plaintiff.**

JOHN G. BARNES, called as a witness on behalf of the plaintiff, being first duly sworn, was interrogated by Mr. Falknor, attorney for plaintiff, and testified as follows:

Q. Is that your signature to that letter (Showing.) A. Yes, it is.

Q. Were you attorney for Mrs. Curtis, one of the defendants, at the time you wrote this letter?

A. Yes, sir; I was.

Mr. FALKNOR.—We offer in evidence the letter written by John G. Barnes, dated April 9, 1920, addressed to the plaintiff.

Mr. BARNES.—I beg your pardon; it is not addressed to the plaintiff.

Mr. FALKNOR.—It is addressed to an officer of the plaintiff then, we will show.

The COURT.—It may be admitted in evidence.

Thereupon the letter referred to was admitted in evidence, and marked Plaintiff's Exhibit 13.



**Testimony of W. B. Herr, for Plaintiff.**

W. B. HERR, called as a witness on behalf of plaintiff, being first duly sworn, was interrogated by Mr. Falknor, attorney for plaintiff, and testified as follows:

That he was familiar with the signature of J. W. Bryan, an attorney. That he knew that at that time he was representing Mrs. Curtis, that he was her attorney. That the signature to the letter shown him was Mr. Bryan's, attorney for Mrs. Curtis. [54]

Mr. FALKNOR.—We offer this letter in evidence in connection with the other letter, for the purpose of showing that the defendant, Mrs. Curtis, at this time recognized our title to the property, through her attorney.

The COURT.—It may be admitted.

Thereupon the letter referred to was admitted in evidence, and marked Plaintiff's Exhibit 14.

Mr. FALKNOR.—We now offer in evidence a receipt for the last taxes paid to the State of New York, corporate taxes, and license fee, paid on January 9, 1920, together with certificate that the articles of incorporation were filed on the 18th day of December, 1909.

Mr. BARNES.—I object to that as incompetent, immaterial and irrelevant, not proper evidence, and cannot be introduced in evidence on account of not being authenticated in the manner provided by the statutes of the United States.



(Testimony of Edward S. Curtis.)

The COURT.—Objection overruled.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed. It may be admitted.

Thereupon the receipt and certificate referred to, was admitted in evidence and marked Plaintiff's Exhibit 15.

**Testimony of Edward S. Curtis, for Plaintiff.**

EDWARD S. CURTIS, a witness called on behalf of the plaintiff, being first duly sworn, was interrogated by Mr. Falknor, attorney for plaintiff, and testified as follows:

That he was one of the defendants in this case. That at the time he executed the bill of sale on the 21st day of December, 1909, being Exhibit 1, he was married to Clara J. Curtis, the other defendant, and they were husband and wife.

Q. Where was the property situated at the time you executed that bill of sale referred to, and covered by the bill of sale?

Mr. BARNES.—I object to that as being incompetent, immaterial and irrelevant, not the best evidence, and the bill of sale itself [55] is the best evidence.

The COURT.—Objection overruled. Exception allowed.

A. At that time the material was in the Curtis Studio which was then located in the Downs Block, on Second Avenue, in the City of Seattle, King County, Washington.

(Testimony of Edward S. Curtis.)

The witness further testified: I am now a resident of Seattle, State of Washington. I was a resident of Seattle, King County, Washington, at the time this action was instituted. I am familiar with the property the marshal seized in this action. It is the property of the North American Indian. There are a few exceptions to that.

Q. What are they?

A. A bundle of negatives, about thirty in number, I believe, of different members of the Roosevelt family, and an old broken mimeograph, of practically no value. I am now giving this material from my recollection of some months ago. There was a box containing a fish net, I believe, which is valued a couple of dollars, or such a matter; there was a bundle of burlap there, of perhaps *perhaps* two or three dollars, and there was a box containing old cancelled checks of no value; there was a box containing some old portrait proofs of no value, and I believe there were four or five negatives of people, not Indians; as far as I recollect, that was about all.

Q. Those are the only exceptions?

A. Only exceptions that I could find.

Q. And all the rest and remainder of the property belongs to the plaintiff?      A. It does.

On cross-examination by Mr. Barnes the witness testified that he did not find about one hundred negatives of Mt. Rainier, didn't see any. Didn't particularly look for them. I had no information of any of that sort, so there might be odds and ends

(Testimony of Edward S. Curtis.)

of negatives [56] in all those thousands of negatives that I would not see.

Mr. FALKNOR.—The plaintiff rests.

Mr. BARNES.—I offer in evidence, may it please the Court, sections 35 and 37 of the General Corporation Law of the State of New York, as shown and set forth in Birdseye, Cummings & Gilberts Consolidated Laws of New York, Annotated, and which are found in Volume 3 of that law, and which bear the certificate of Secretary of State of New York that they are published by authority, and that they are the laws of New York.

I will state to the Court that this volume belongs to the library, and it is only by special dispensation that it can be had at all, and I desire to read into the record those two sections.

Mr. FALKNOR.—I object to this as being incompetent, immaterial and irrelevant. This is a corporation, at least *de facto*. They have admitted negotiations with it, and are estopped to deny its existence.

The COURT.—I will let Mr. Barnes make his record. The objection is overruled.

Mr. FALKNOR.—Note an exception.

The COURT.—Exception allowed.

Mr. BARNES.—I will read section 35.

“Upon the dissolution of any corporation its directors, unless other persons shall be appointed by the legislature, or by some court of competent jurisdiction, shall be the trustees of its creditors, stockholders, or members, and shall

have full power to settle its affairs, collect and pay outstanding debts, and divide among the persons entitled thereto the money and other property remaining after payment of debts and necessary expenses.

“Such trustees shall have authority to sue for and recover the debts and property of the corporation by their name as such trustees and shall jointly and severally be personally liable to its creditors, stockholders, or members, to the extent of its property and effects, that shall come into their hands.”

“Section 37. Any domestic corporation, at any time before the expiration thereof, may extend the term of its existence beyond the time specified in its original certificate of incorporation, or by-law, or in any certificate of extension of corporate existence, by the consent of the stockholders owning two-thirds in amount of its capital stock, or if such a stock corporation, by the consent of two-thirds of its members, which consent shall be given either in writing, or by vote, at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the [57] annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by a vote at a meeting as aforesaid, shall be subscribed and acknowledged by the President or Vice-president, and

by the Secretary, or Assistant Secretary of the corporation; and if a corporation formed, under, or subject to the banking law, shall be filed in the office of the Superintendent of Banks, if an insurance corporation, in the office of the Superintendent of Insurance, and otherwise in the office of the Secretary of State, and shall, by such officer, be duly recorded and indexed in a book specially provided therefor, and a certified copy of such certificate, with the certificate of such officer of such filing and record, or a duplicate original of such certificates, shall be filed and similarly recorded, and indexed, in the office of the Clerk of the County wherein the corporation has its principal place of business, and shall be noted in the margin of the record of the original certificate of such corporation, if any, in such offices, and thereafter the term of the existence of such corporation shall be extended as designated in such certificate.

“The certificate of incorporation of any corporation whose duration is limited by such certificate, or by law, may require that the consent of the stockholders owning a greater percentage than two-thirds of the stock, if a stock corporation, or of more than two-thirds of the members, if a non-stock corporation shall be requisite to effect the extension of corporate existence as authorized by this section.”



Mr. BARNES.—I now, may it please the Court, offer in evidence an exemplified copy of the certificate of incorporation of The North American Indian, exemplified under the office seal, and also of the Great Seal of State, of the Secretary of State, of the State of New York, filed and recorded on December 18, 1909.

Mr. FALKNOR.—We object to it as being immaterial.

The COURT.—The objection is overruled.

Mr. FALKNOR.—Note an exception.

The COURT.—Exception allowed. It may be admitted.

Thereupon the paper referred to was admitted in evidence, and marked Defendant's Exhibit "A."

**Testimony of Lewis Albert, for Defendant  
(Recalled).**

LEWIS ALBERT, recalled as a witness on behalf of the defendant Clara J. Curtis, was interrogated by Mr. Barnes, her attorney, and testified as follows:

Q. Mr. Albert, on the 18th day of August, 1920, you and Mr. Robert I. Alberts, and Mr. Joseph S. Clements signed and acknowledged Articles of Incorporation of The North American Indian, Inc., did you not? [58]      A. Yes, sir.

Q. And you filed those in the Secretary of State office of the State of New York on the 23d day of August, did you not?      A. I did not.

Q. You did not?      A. No, sir.

(Testimony of Lewis Albert.)

Q. You don't know whether they were filed or not?

A. I know that they were filed. Yes, I believe they were.

Q. In that certificate of incorporation you recited that this "The North American Indian" has ceased to exist in December, 1919, did you not?

Mr. FALKNOR.—We object to that as being immaterial. It is a technical question between the trustees and the plaintiff. What difference does it make?

The COURT.—It is not the best evidence. The objection is sustained.

Mr. BARNES.—No, it is not the best evidence, but this man testified that he was manager of this dead corporation in his examination in chief. At this time I certainly have the right to put him on the stand in rebuttal to that.

The COURT.—You are asking him about something that was in some writing on file. I sustain the objection on the ground that it is not the best evidence.

Mr. BARNES.—Note an exception.

The COURT.—Exception allowed.

Mr. BARNES.—The defense rests.

Mr. FALKNOR.—At this time we move that your Honor direct the jury to return a verdict for the plaintiff in accordance with the demand of the complaint excepting from the verdict the property that Mr. Curtis has indicated as exceptions that don't belong to the plaintiff; and for the sake of



(Testimony of Lewis Albert.)

this motion we waive any question of damages.  
[59]

The COURT.—Do you want to be heard on that, Mr. Barnes?

Mr. BARNES.—Yes, your Honor.

After argument by Mr. Barnes the Court ordered the jury returned into court, and being all present, the Court said:

The COURT.—Gentlemen of the jury, you are excused until ten o'clock Tuesday morning of next week. Bear in mind the caution I have given you. We will adjourn this trial until Tuesday morning at 10 A. M.

Trial resumed Tuesday morning, November 9, 1920, 10 A. M. Jury absent.

Mr. FALKNOR.—If the Court please we are submitting at this time a petition to add as plaintiffs the existing trustees, Mr. Pegram and Mr. Borghum, one in the State of New York, and the other in the State of Connecticut. We have asked to add, not substitute, because I don't think substitution is necessary. We are asking that these two trustees be associated in this case at this time.

Mr. BARNES.—The only controversy in this case is as to whether or not, the defendant, Edward S. Curtis and Clara J. Curtis were unlawfully in possession of this property which was replevined and they refused to deliver it; in other words, it is found in the allegations of paragraph 3. That is the gist of the case.

The COURT.—What about the necessity of any

demand, since you came in and claimed it?

Mr. BARNES.—I am not claiming to be the owner of this property.

Mr. FALKNOR.—Do you admit that you are not?

Mr. BARNES.—My answer does not say so. Have you found any place in there where we claim to be the owner?

Mr. FALKNOR.—You stated awhile ago—then you are disclaiming any interest in the property?

Mr. BARNES.—I am not disclaiming any interest in the [60] property; I am not disclaiming that; I am saying that this defendant is not claiming to be the owner of this property, and she never did claim to be the owner, but it is upon the plaintiff to prove right of possession.

The COURT.—I am going to allow this petition to add the additional plaintiffs. I will ask Mr. Falknor whether, as a condition of allowing that, in the event that you win the suit, are you willing to forego your costs against Mr. Curtis?

Mr. WRIGHT.—We will do that, if your Honor please.

Mr. BARNES.—I desire on the part of Clara J. Curtis to take an exception to the order of the Court allowing the adding as plaintiffs herein, E. S. Pegram, and Gutson Burglam.

Mr. FALKNOR.—Mr. Barnes, I asked you as an attorney, in the presence of the Court, are there any other trustees other than the two we have named, except Edward S. Curtis?

Mr. BARNES.—No.

The COURT.—My understanding of your statement was to the effect that these men were not trustees.

Mr. BARNES.—No, no, your Honor; that was not it. My statement is that these men are not the only trustees. They say here they are the sole and only.

The COURT.—On your admission that Mr. Curtis is the other one, I will grant the motion to add these additional plaintiffs, on your admission, denying you further time.

Mr. BARNES.—Your Honor, I am not making any admissions in this case.

Mr. WRIGHT.—You are making them all the time.

The COURT.—You are allowed your exceptions that you claimed a moment ago.

Mr. FALKNOR.—We will ask the Court to direct the jury to return a verdict as requested.

The COURT.—I have listened to this argument—  
[61]

Mr. BARNES.—The defendant Clara J. Curtis, excepts to the ruling of the Court, and to the statement of the Court, that ‘upon the admission of counsel.’

The COURT.—What was it? You certainly admitted that all your claim was that you didn’t mean to claim that these men named Burglam and Pegram, were not directors, as I understood you to say, that you would be able to prove that they were not directors; that is what you said that you didn’t mean by that they were not directors, but that they

were not the only ones, but Mr. Curtis was the other one; that is what you said.

Mr. BARNES.—Will your Honor give attention to me for one second? Here is an allegation that they are the sole and only directors, and trustees of the North American Indian, a corporation, and plaintiff herein. I deny that, and ask for leave to produce proof that that is not a fact.

The COURT.—Yes; but you claim that that is not the fact, that Mr. Curtis is the other one. I am disregarding that, that he having arrayed himself against the corporation, the Court would align him as defendant, and he would not be allowed to take any part as a plaintiff.

Mr. BARNES.—The defendant Clara J. Curtis excepts.

The COURT.—You can have your exception allowed.

At no time did the defendant Clara J. Curtis, or her attorney contend that the additional plaintiffs, as trustees, to wit: E. S. Pegram and Gutson Burgram, were not residents respectively of the State of New York and the State of Connecticut.

Mr. FALKNOR.—We will ask the Court to direct the jury to return a verdict as requested.

The COURT.—Have you prepared your verdict?

Mr. FALKNOR.—Yes, your Honor.

The COURT.—Let me see it.

Mr. WRIGHT.—Prepared it adding the other parties. I have [62] prepared it with the exception of what the testimony shows of property that does not belong to the North American Indian, and

setting forth the value of that property.

The COURT.—I will put in at the foot of this, “Being instructed by the Court so to do.”

The COURT.—Bring in the jury.

Jury returned into court, and all present.

The COURT.—Gentlemen, select a foreman right in the box.

Thereupon the jury selected W. D. Allen as their foreman.

The COURT.—Gentlemen of the jury, the Court has decided this case on the law, but under our form of procedure it is necessary for the Court to require you to return a verdict in conformity to the Court’s decision as to the law, and this is the verdict: (Court reads to jury:)

We, the jury in the above-entitled cause, do hereby find that the plaintiffs are the owners of, and entitled to the possession of all the property replevined by the marshal, now located in room 64, Cobb Building, Seattle, Washington, except the following:

- |        |  |               |
|--------|--|---------------|
| No. 1. | Mimeograph .....                                     | No value      |
| No. 2. | Three printing-frames ....                           | Value \$5.00  |
| No. 3. | Small box containing cancelled checks .....          | No value      |
| No. 4. | One box containing portrait proofs .....             | No value      |
| No. 5. | One box containing fish-nets .. .....                | Value \$2.00  |
| No. 6. | One box containing burlap.                           | Value \$2.50  |
| No. 7. | Twenty-nine large negatives of Roosevelt family..... | Unknown value |

One small Roosevelt negative .....  
 Five negatives of women..  
 One red pocketbook, about  
 150 years old.....Unknown value.  
 Being instructed by the Court so to do.

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Foreman.

Mr. BARNES.—The defendant, Clara J. Curtis, at this time takes a general exception to the ruling of the Court granting the motion of the plaintiffs for the instructed verdict, and to the instruction ordering and directing the jury to return a verdict as given by the Court.

The COURT.—Exception allowed. [63]

Thereupon the foreman of the jury signed the verdict.

The COURT.—Gentlemen, listen to the verdict as it stands recorded.

Thereupon the clerk read the verdict.

The COURT.—Gentlemen, do you say one and all that this is your verdict?

JURORS.—Yes.

Mr. BARNES.—The defendant Clara J. Curtis excepts to the acceptance and objects to the acceptance of this verdict.

The COURT.—The objection will be overruled, and an exception allowed. The verdict will be accepted and filed as your verdict and finding in the case, and you are discharged from further consideration of the case.



Mr. BARNES.—We would like an exception, your Honor.

The COURT.—Exception allowed.

The United States of America,  
Western District of Washington,—ss.

I, Edward E. Cushman, one of the Judges of the United States District Court for the Western District of Washington, and the Judge before whom the above-entitled cause was tried, do hereby certify:

That the matters and proceedings embodied in the foregoing bill of exceptions are matters and proceedings occurring in said cause, and the same are hereby made a part of the record herein.

That the foregoing bill of exceptions contains all of the evidence, and testimony introduced upon the hearing of said cause, together with all objections and exceptions made and taken to the admission, or exclusion of testimony; that the foregoing is a true bill of exceptions, is correct in every particular, is hereby settled and allowed, and made a part of the record in this cause, [64] and that the exhibits referred to therein are all the exhibits introduced upon the trial of said cause.

Done in open court this 17th day of January, 1921.

EDWARD E. CUSHMAN,  
United States District Judge for the Western District of Washington.

[Indorsed]: Filed in the United States, District Court, Western District of Washington, Northern

Division. Jan. 17, 1921. F. M. Harshberger,  
Clerk. By S. E. Leitch, Deputy. [65]

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United States District Court, for the Western Dis-  
trict of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

E. S. PEGRAM and GUTSON BORGLUM,  
Additional Plaintiffs,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Petition for New Trial.**

Comes now the defendant in the above-entitled ac-  
tion, Clara J. Curtis, by John G. Barnes, her attor-  
ney, and petitions and moves the Court to vacate,  
and set aside the verdict in the above-entitled cause  
rendered by the jury in accordance with the order  
and direction of the Court, and grant a new trial of  
said cause, upon the following grounds, to wit:

I.

Irregularity in, and abuse of discretion by, the  
Court in making and entering in the above-entitled  
cause on the 9th day of November, 1920, the order:  
“It is hereby ordered, that E. S. Pegram, a resi-  
dent of the State of New York, and Gutson Bor-

glum, a resident of the State of Connecticut, being the sole directors of the plaintiff herein, are hereby added as plaintiffs in the above action," by which the defendant, Clara J. Curtis, was prevented from having a fair trial of said cause.

## II.

Irregularity in, and abuse of discretion by, the [66] Court in the order and decision of the Court made in the above-entitled cause on the 9th day of November, 1920, granting the motion of the plaintiff, and additional plaintiffs, for, and instructing the jury to, render a verdict in their favor, by which the defendant, Clara J. Curtis, was prevented from having a fair trial of said cause.

## III.

Insufficiency of the evidence to justify the verdict rendered under the instruction of the Court. The particulars wherein the evidence is claimed to be insufficient to justify the said verdict are as follows:

1. That the plaintiff in the above-entitled action, The North American Indian, Inc., was at the time of the commencement of said action a corporation organized, or existing, under and by virtue of the laws of the State of New York, or of any other State, or at all.

2. That the principal place of business of the plaintiff, The North American Indian, Inc., was at the time of the commencement of the above-entitled action in New York City, New York, or in any other place, or at all.

3. That the additional plaintiff, E. S. Pegram,

was at the time of the commencement of the above-entitled action, or at any other time, or at all, a citizen, or resident, of the State of New York, or a citizen, or resident, of any other State.

4. That the additional plaintiff, Gutson Borglum, was at the time of the commencement of the above-entitled action, or at any other time, or at all, a citizen, or resident, of the State of Connecticut, or a citizen, or resident, of any other State.

5. That the additional plaintiffs, E. S. Pegram and Gutson Borglum, are the sole, or sole and only, directors, or [67] trustees, of the plaintiff in the above-entitled action, The North American Indian, Inc., or that they, or either of them, are directors, or trustees, of said plaintiff, The North American Indian, Inc., at all.

6. That the matter in controversy in the above-entitled action exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars.

#### IV.

That the verdict rendered in the above-entitled action is against law in the following particulars:

1. That it does not find that at the time of the commencement of the above-entitled action the plaintiff, The North American Indian, Inc., was a corporation organized and existing under and by virtue of the laws of the State of New York or the laws of any other State, or at all, nor that its principal place of business was in New York City, New York, or elsewhere in the State of New York, or in any other State, or at all.

2. That it does not find that at the time of the

commencement of the above-entitled action or at any other time, or at all, the additional plaintiff, Gutson Borglum, was either a citizen, or resident, of the State of Connecticut, or of any other State.

3. That it does not find that at the time of the commencement of the above-entitled action, or at any other time, or at all, the additional plaintiff, E. S. Pegram, was either a citizen, or resident, of the State of New York, or of any other State.

4. That it does not find that the matter in controversy in the above-entitled action exceeds, exclusive of interest and costs, the sum or value, of Three Thousand Dollars, or any other sum, or value, whatsoever, or at all. [68]

5. That it does not find that the defendants in the above-entitled action, or either of them, were at the time of the commencement of the above-entitled action, either citizens, residents, or inhabitants, of the State of Washington.

6. That it does not find that the defendants in the above-entitled action, or either of them, and particularly the defendant, Clara J. Curtis, were, or was, at the time of the commencement of the above-entitled action, or at all, either wrongfully, or unlawfully, in possession of a large, or any, amount of personal property belonging to the plaintiffs, or that they, or either of them, at said time, or at any time, or at all, denied the right of the possession to the plaintiffs herein, or that the said defendants in the above-entitled action, or either of them, or particularly the defendant, Clara J. Curtis, wrongfully, or unlawfully, or at all, held possession



of any property whatsoever in King County, Washington, or in said District, or in any other place, or at all, notwithstanding the plaintiffs had demanded possession thereof.

7. That it does not find that the defendants in the above-entitled action, or either of them, and particularly the defendant, Clara J. Curtis, ever at any time, or at all, wrongfully, or otherwise, or at all, held possession of the property, or any part of it, mentioned or described in the complaint in the above-entitled action.

#### V.

Error in law occurring at the trial, and excepted to at the time by the defendant, Clara J. Curtis. The particular error relied upon being as follows:

1. Error in refusing to the attorney for Clara J. Curtis the privilege of examining Plaintiffs' Exhibit 1 after it was offered in evidence, before making his objections to the introduction thereof in evidence, and in denying the objections [69] of said defendant to the introduction in, and allowing said Plaintiff's Exhibit No. 1 to be received in evidence.

2. Error in denying the objections of said defendant, Clara J. Curtis, to the introduction in evidence of each of Plaintiff's Exhibits numbered 1, 2, 3, 4, 5, 6, 7, 8, 9 10 and 11, and admitting the same, and each of them in evidence.

3. Error in denying the objections of said defendant, Clara J. Curtis, to the introduction in evidence of Plaintiff's Exhibit No. 15, and admitting the same in evidence.



4. Error in denying the objections of said defendant, Clara J. Curtis, to all the testimony of the witness, Wayne Albee.

5. Error in sustaining the objections of plaintiff to questions propounded by defendant, Clara J. Curtis, to the witness Lewis Albert, concerning a certificate of incorporation of The North American Indian, Inc., executed by him in August, 1920, and of the contents thereof, and in refusing to permit said witness to answer the same.

6. Error in making and entering the order adding E. S. Pegram and Gutson Borglum as additional plaintiffs in the above-entitled action.

7. Error in granting a motion of plaintiff therefor, and in instructing the jury to return the verdict returned by it in the above-entitled action.

8. Error in receiving and filing the instructed verdict of the jury made in accordance with the direction of the Court so to do.

The foregoing petition and motion is based upon the files and records of the above-entitled court in the above-entitled cause and upon the proceedings had and taken in the trial thereof held on the 5th and 9th days of the month of November, 1920.

JOHN G. BARNES,

Attorney for Clara J. Curtis. [70]

Service of within motion for new trial and receipt of copy admitted this twelfth day of November, 1920.

WRIGHT & WRIGHT, and  
POE & FALKNOR,  
Attorneys for Plaintiffs.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 12, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [71]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 5225.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Order Denying Motion of Defendant Clara J. Curtis  
for New Trial.**

This cause came on duly and regularly for hearing on the 20th day of December, 1920, on the motion of the defendant Clara J. Curtis for a new trial of this action. The plaintiff appeared by Elias Wright, of Wright & Wright, attorneys for plaintiff, and the defendant Clara J. Curtis appeared by John G. Barnes, her attorney. After hearing the argument of the attorney for Clara J. Curtis, defendant, in support of said motion, the Court being fully advised in the premises, it is by the Court  
ORDERED, that the motion of the defendant

Clara J. Curtis for a new trial of this action be, and the same is hereby denied.

To which ruling and order of the Court the defendant, Clara J. Curtis, by her said attorney, then and there excepted, and her exception is hereby allowed.

Done in open court this third day of January, 1921.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 3, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [72]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 5225—LAW.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Notice to Join in Application for Writ of Error.**

To the Above-named Defendant, Edward S. Curtis,  
and to Messrs. Herr, Bayley & Croson, His Attorneys:

You, and each of you, will please take notice, that the defendant above named, Clara J. Curtis, is about to apply to the Judge of the United States District Court for the Western District of Washington, Northern Division, for a writ of error to have the United States Circuit Court of Appeals for the Ninth Circuit, review the orders and judgment of the above-entitled court, in the above-entitled action, and that she hereby demands, requests, and notifies you to join in the application for such writ of error.

Dated at Seattle, Washington, this second day of June, 1921.

JOHN G. BARNES,

Attorney for Clara J. Curtis, Defendant Above  
Named.

Service, and receipt of a copy of the foregoing notice at the city of Seattle, Washington, this second day of June, 1921, is hereby acknowledged and admitted, and notice hereby given that the defendant Edward S. Curtis refuses to join in the application for a Writ of Error in the above-entitled action.

HERR, BAYLEY & CROSON,

Attorneys for Edward S. Curtis, Defendant Above  
Named.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 1, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [73]

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In the United States District Court for the Western District of Washington, Northern Division.

No. 5225—LAW.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

E. S. PEGRAM and GUTSON BORGLUM,  
Additional Plaintiffs.

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,

Defendants.

**Petition for Writ of Error.**

To the Hon. EDWARD E. CUSHMAN, Judge of  
the District Court Aforesaid:

Now comes Clara J. Curtis, one of the above-named defendants, by John G. Barnes, her attorney, and respectfully shows that on the 17th day of May, 1920, the Court entered its order denying the motion of said defendant, your petitioner, to quash and annul the writ of replevin issued in this cause on the 19th day of April, 1920, and to quash and annul the execution of said writ of replevin by

the marshal; that on the 9th day of November, 1920, the Court made and entered its order adding E. S. Pegram and Gutson Borglum as plaintiffs in said action; that on the 9th day of November, 1920, the Court instructed the jury, and directed it to return a verdict against your petitioner, and in favor of the plaintiff and additional plaintiffs, and upon said directed verdict a final judgment was entered on the 20th day of December, 1920, against your petitioner, one of said defendants.

Your petitioner feeling herself aggrieved by the said orders, verdict and judgment entered thereon, as aforesaid, herewith petitions the Court for an order allowing her to prosecute a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit, under the laws of the United States in such case made and provided.

Your petitioner further shows that she has duly served upon the [74] only other defendant in this action, Edward S. Curtis, notice and demand to join in this application for a writ of error, and that said Edward S. Curtis has in writing refused so to do, all of which is on file herein.

WHEREFORE, premises considered, your petitioner prays that a writ of error do issue that an appeal in this behalf to the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors complained of, and herewith assigned, be allowed, and that an order be made fixing the amount of the security to be given by plaintiff in error, conditioned as the law directs.

JOHN G. BARNES,

Attorney for Clara J. Curtis, Petitioner in Error.



Writ of error granted this 17th day of June, 1921. Bond fixed at the sum of Five Hundred Dollars.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 17, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [75]

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

No. 5225—LAW.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

E. S. PEGRAM and GUTSON BORGLUM,  
Additional Plaintiffs,  
vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO,  
Defendants.

### **Assignment of Errors.**

Now comes Clara J. Curtis in the above-numbered and entitled case, and in connection with her petition for a writ of error in this cause assigns the following errors which plaintiff in error avers occurred therein, on the trial thereof, and upon which

she relies to reverse the judgment entered herein as appears of record:

### I.

That the Court erred in making and entering its order on the 17th day of May, 1920, denying the motion of plaintiff in error to quash and annul the writ of replevin issued in this cause on the 19th day of April, 1920, and to quash and annul the execution of said writ by the marshal, for the reasons that the Court was without jurisdiction, right or authority to issue said writ of replevin, and the marshal was without right or authority in executing the same, such a writ being unknown, and unprovided for, under the laws of the State of Washington.

### II.

The Court erred in denying the objection of the plaintiff in error to the admission in evidence of Plaintiff's Exhibit 15, and in admitting said exhibit in evidence. The full substance of Plaintiff's Exhibit 15 is that it consists of (1) A purported notice of assessment [76] and receipt from the state tax department, Albany, New York, dated the 18th day of November, 1919, notifying North American Indian, Inc., 437 5th Ave., New York City, that there had been assessed against it an estate franchise tax for period ending October 31, 1920, one mill on cap. stk., amounting to the sum of \$110.00 due and payable on or before January first, 1920, stamped: "Jan. 9-20 Received payment. Eugene M. Travis, Comptroller," and (2) A certificate of the Secretary of State of the State of New York, under the office seal, certifying that the certificate of incor-

poration of the North American Indian, with acknowledgment thereto annexed, was filed and recorded in his office on the 18th day of December, 1909.

### III.

The Court erred in granting the petition of E. S. Pegram and Gutson Borglum that they be added as plaintiffs in the action; and in making and entering its order adding said E. S. Pegram and Gutson Borglum as plaintiffs in the action, for the reasons:

1. Said petition was filed, and said order made, after both the plaintiff in the action, and plaintiff in error, had each closed its, and her, case to the jury, and after the plaintiff in the case had moved the Court to "direct the jury to return a verdict for the plaintiff in accordance with the demand of the complaint, excepting from the verdict the property that Mr. Curtis has indicated as exceptions that don't belong to the plaintiff."

### IV.

That the Court erred in granting the motion of plaintiff, and additional plaintiffs, "to direct the jury to return a verdict as requested," and in directing the jury to return the verdict which the Court instructed it to return, and which, in accordance with such instruction, it did return in the case, for the reasons:

1. No amendment of the complaint in the action was sought, granted or made, after the entry of the order adding the additional plaintiffs. [77]

2. No reopening of the case was sought, granted or had by the plaintiff, or additional plaintiffs, or

either of them, and said verdict was instructed to be returned solely upon the evidence introduced by plaintiff, and plaintiff in error, and after each of them had closed their case to the jury.

V.

That the Court erred in instructing the jury to render, and in receiving and accepting the verdict returned by the jury in accordance with such instruction and direction; and the verdict so directed, returned and received, is against law and the evidence in the case is insufficient to justify said verdict, for the following reasons:

1. No evidence whatsoever was offered, or introduced in the case as to the citizenship of either of the additional plaintiffs E. S. Pegram, or Gutson Borghum.

2. No evidence whatsoever was offered or introduced in the case that either of said additional plaintiffs had any right, title, or interest of any kind whatsoever, or right to possession, of any property whatsoever, or at all, either that mentioned in the complaint, or in that "replevined by the marshal, now located in room 64 Cobb Building, Seattle, Washington," as in the verdict.

3. Said verdict does not find the jurisdiction fact put in issue by the complaint and answer of the plaintiff in error thereto, that at the time of the commencement of the action the plaintiff in the case was a corporation existing under and by virtue of the laws of the State of New York, or that it had any existence whatsoever, or at all, whereas, the evidence introduced by the plaintiff in error was

conclusive, undisputed and admitted, that by reason of the expiration of the time limit fixed in its certificate of incorporation for the duration of its existence, the plaintiff corporation in the case had ceased to exist on the 18th day of December, 1919,—four months before the action was commenced. [78]

4. That said verdict is wholly insufficient to support any judgment whatsoever, and is fatally defective, in that it does not refer to, nor describe, the property, or any of it, mentioned, referred to, or set out in the complaint in the action.

5. That said verdict is wholly insufficient, and is fatally defective in that it does not determine either the ownership of, or right to possession of, all, or any part, of the property referred to, or set out in the complaint, and as to which issue was joined by the answer thereto of plaintiff in error.

6. That said verdict is fatally defective, and wholly insufficient to support any judgment whatsoever in that it does not determine the gist of the action issue made by the complaint and each of the answers of plaintiff in error and defendant Edward S. Curtis, of the alleged wrongful and unlawful detention by plaintiff in error, or defendant Edward S. Curtis, or either of them, of the property referred to, or set out, in the complaint, or of any property whatsoever, or at all.

7. That said verdict is fatally defective, and wholly insufficient to support any judgment in that it does not determine the issue raised by the complaint and the answer thereto of plaintiff in error, of the possession by plaintiff in error at any time,



or at all, of any of the property referred to, or set out, in the complaint.

8. That said verdict is wholly insufficient and fatally defective in that it does not find the value of the property referred to, or set out, in the complaint, or of the property referred to in said verdict, or of any other property save only certain other property which said verdict finds the plaintiffs are not the owners, nor entitled to the possession, and which property is not referred to, described nor set out in the complaint.

## VI.

The Court erred in taking from the jury the right to pass upon the following jurisdictional issues of fact, raised by the complaint [79] and the answer thereto of plaintiff in error, and by the answer of defendant Edward S. Curtis.

1. The issue of fact as to whether or not the plaintiff, The North American Indian, Inc., was at the time of the commencement of the action a corporation organized and existing under and by virtue of the laws of the State of New York. Plaintiff in error introduced in evidence Defendant's Exhibit "A," which is an exemplified certified copy of the certificate of incorporation of The North American Indian, certified to be such by the Secretary of State of the State of New York, under the office, and great seal of the State of New York, which shows that the certificate of incorporation of said corporation was filed in the office of the Secretary of State of the State of New York on the 18th day of December, 1909; that it is provided in such certificate of in-



corporation that the duration of the existence of said corporation shall be ten years. Plaintiff in error also introduced in evidence two sections of the laws of the State of New York, one providing the manner in which the term of the existence of a corporation could be extended beyond the time specified in its original certificate of incorporation, and the other providing that upon the dissolution of a corporation its directors at the time of such dissolution shall be the trustees of its creditors and stockholders, with full power to settle its affairs, with authority, by their name as such trustees, to sue for and recover the debts and property of the dissolved corporation. No evidence whatsoever was offered by plaintiff in the case in rebuttal of the evidence so introduced by plaintiff in error.

2. The value of the property referred to, or set out, in the complaint. Upon this issue there was no evidence whatsoever.

## VII.

The Court erred in denying the motion of the plaintiff in error for a new trial upon the grounds:

1. Insufficiency of the evidence to justify the verdict rendered [80] under the instructions of the court;

2. That the verdict is against law.

3. Error in law occurring at the trial, and excepted to at the time by the plaintiff in error, the particular errors relied upon being as follows: (10) Error in denying the objections of plaintiff in error to the introduction in evidence of each of plaintiff's exhibits numbered 1, 2, 3, 4, 5, 6, 7, 8,

9, 10 and 11, and in admitting the same, and each of them, in evidence. (2) Error in denying the objections of plaintiff in error to all of the testimony of the witness Wayne Albee.

### VIII.

The Court erred in making and entering the judgment made and entered in the case:

1. Because there is no verdict sufficient in law to support said judgment, or any judgment;

2. Because said judgment does not conform to the verdict in the case in that it is therein adjudged "that the plaintiffs are the owners of and entitled to the possession of all of the property replevined by the plaintiff," whereas the verdict is "that the plaintiffs are the owners of, and entitled to the possession of all the property replevined by the marshal."

3. Because the verdict did not find, and the court was without jurisdiction to adjudge that plaintiffs return to the Curtis Studio the property described in the judgment as not belonging to plaintiffs, or that in the event of their failure so to do, they pay the defendants the sum of Nine and 50/100 Dollars, the value of said property.

WHEREFORE, plaintiff in error prays that the judgment of said court be reversed, etc.

JOHN G. BARNES,

Attorney for Clara J. Curtis, Plaintiff in Error.

[81]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division Jun. 17, 1921. F. M. Harshberger, Clerk.  
By S. E. Leitch, Deputy. [82]

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In the United States District Court for the Western  
District of Washington, Northern Division.

No. 5225—LAW.

THE NORTH AMERICAN INDIAN, INC.,  
Plaintiff,

E. S. PEGRAM and GUSTON BORGLUM,  
Additional Plaintiffs,

vs.

EDWARD S. CURTIS and CLARA J. CURTIS,  
Formerly Husband and Wife, and CURTIS  
STUDIO.

Defendants.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS,  
that we, Clara J. Curtis, plaintiff in error, as principal, and Fidelity & Deposit Company, of Maryland, a corporation, as surety, are held and firmly bound unto The North American Indian, Inc., and E. S. Pegram and Guston Borglum, in the full and just sum of Five Hundred Dollars, to be paid to the said The North American Indian, Inc., E. S. Pegram and Gutson Borglum, its and their attorneys, successors, administrators, executors or assigns, to which payment well and truly to be made we bind ourselves, our successors, assigns, executors and administrators jointly and severally by these presents.

Signed and dated this the 17th day of June, A. D. 1921.

Whereas, lately at a regular term of the District Court of the United States for the Western District of Washington, Northern Division, sitting at the City of Seattle, in said District, in a suit pending in said court between The North American Indian, Inc., as plaintiff, and E. S. Pegram and Gutson Borglum as additional plaintiffs, and Edward S. Curtis and Clara J. Curtis, formerly husband and wife, and Curtis Studio, as defendants, cause No. 5225 on the Law Docket of said court, final judgment was rendered against the said defendants that the plaintiffs are the owners of and entitled to the possession of all of the property replevined by the plaintiff and seized by the marshal and now located in Room 64 Cobb Building, in Seattle, King County, Washington, except [83] certain property in said judgment described, and the said Clara J. Curtis, one of said defendants, has obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment of the said Court in the aforesaid suit; and a citation directed to the said The North American Indian, Inc., E. S. Pegram and Gutson Borglum, citing it and them to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California, according to law within thirty days from the date hereof.

Now, the condition of the above obligation is such that if the said Clara J. Curtis shall prosecute her

writ of error to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

CLARA J. CURTIS.  
FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND.

[Corporate Seal] By J. A. CATHCART,  
Atty. in Fact.

The foregoing bond approved this the 17th day of June, 1921.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 17, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [84]

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. 5225.

CLARA J. CURTIS,  
Plaintiff in Error,  
vs.

THE NORTH AMERICAN INDIAN, INC., E. S.  
PEGRAM and GUTSON BORGLUM,  
Defendants in Error.

**Praeceptum for Transcript of Record.**

To Hon. F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington:

Please prepare and return a transcript of the following papers and records in cause No. 5225 with the writ of error in the above-entitled cause:

1. The complaint.
2. The summons and return.
3. The answers of each of the defendants.
4. The amended reply of plaintiff.
5. The affidavit for writ of replevin.
6. The bond for writ of replevin.
7. The order for the writ of replevin to issue.
8. The writ of replevin, and return.
9. Motion of defendant Clara J. Curtis to quash writ of replevin.
10. Order denying motion to quash, and exception.
11. Impanelling jury.
12. Petition of E. S. Pegram and Gutson Borglum to be added as plaintiffs.
13. Order making E. S. Pegram and Gutson Borglum additional plffs.
14. Verdict.
15. Judgment.
16. Bill of exceptions.
- 16½. Motion for new trial and order denying.
17. Notice to Edward S. Curtis to join in application for writ of error, and refusal.



18. Petition for writ of error, order allowing, fixing bond, etc.
19. Assignment of errors.
20. Bond and approval.
21. Order to send up exhibits.
22. Praeceptum.

JOHN G. BARNES,

Attorney for Clara J. Curtis, Plaintiff in Error.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 23, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [85]

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United States District Court, Western District of  
Washington, Northern Division.

No. 5225.

CLARA J. CURTIS,

Plaintiff in Error,

vs.

THE NORTH AMERICAN INDIAN, INC., E. S.  
PEGRAM and GUTSON BORGLUM,  
Defendants in Error.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 85, inclusive, to be a full, true, correct and complete

copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges, incurred and paid in my office on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate or return 215 folios at 15c. ....	\$32.25
Certificate of Clerk to transcript of record, 4 folios at 15c. ....	.60
Seal to said certificate .....	.20
[86]	

I hereby certify that the above cost for preparing and certifying record amounting to \$33.05, has been paid to me by attorneys for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error, original citation, and original order for the sending up of exhibits issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 12th day of July, A. D. 1921.

[Seal] F. M. HARSHBERGER,  
Clerk United States District Court, Western District of Washington. [87]

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In the United States Circuit Court of Appeals for the Ninth Circuit.

#5225.

CLARA J. CURTIS,

Plaintiff in Error,

vs.

THE NORTH AMERICAN INDIAN, INC., E. S.  
PEGRAM and GUTSON BORGLUM,  
Defendants in Error.

**Writ of Error.**

United States of America,—ss.

The President of the United States, to the Hon. Judge of the District Court of the United States for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between Clara J. Curtis, plaintiff in error, and The North American Indian, Inc., E. S. Pegram and Gutson Borglum, defendants in error, a manifest error has

happened to the damage of Clara J. Curtis, plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, where said Court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States should be done. [88]

WITNESS the Hon. EDWARD D. WHITE, Chief Justice of the United States, this the seventeenth day of June, A. D. 1921.

[Seal] F. M. HARSHBERGER,  
Clerk of the United States District Court for the  
Western District of Washington.

Allowed this the 17th day of June, A. D. 1921.

EDWARD E. CUSHMAN,  
United States Judge.

Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 17, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [89]

In the United States Circuit Court of Appeals  
for the Ninth Circuit.

CLARA J. CURTIS,

Plaintiff in Error,

vs.

THE NORTH AMERICAN INDIAN, INC., E. S.

PEGRAM and Guston Borglum,

Defendants in Error.

**Citation on Writ of Error.**

United States of America to The North American  
Indian, Inc., E. S. Pegram and Gutson Borg-  
lum, Defendants in Error, GREETING:

You are hereby cited and admonished to be and  
appear in the United States Circuit Court of Ap-  
peals for the Ninth Circuit, at the city of San Fran-  
cisco, State of California, thirty days from and  
after the day this citation bears date, pursuant to a  
writ of error filed in the clerk's office of the United  
States District Court for the Western District of  
Washington, Northern Division, wherein Clara J.  
Curtis is plaintiff in error, and you are defendants  
in error, to show cause, if any there be, why the  
judgment rendered against the said Clara J. Curtis,  
plaintiff in error, as in said writ of error mentioned  
should not be corrected, and why speedy justice  
should not be done the parties in that behalf.

WITNESS, the Honorable EDWARD E. CUSH-  
MAN, Judge of the United States District Court

of Western Washington, this seventeenth day of June, A. D. 1921.

[Seal]                      EDWARD E. CUSHMAN,  
Judge of the United States District Court for the  
District of Western Washington.

Receipt of a copy, and service of the foregoing citation this seventeenth day of June, A. D. 1921, is hereby admitted and acknowledged.

                                WRIGHT & WRIGHT,  
                                POE & FALKNOR,  
Attorneys for The North American Indian, Inc.,  
E. S. Pegram and Gutson Borglum, Defendants in Error. [90]

Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 17, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit.

CLARA J. CURTIS,

Plaintiff in Error,

vs.

THE NORTH AMERICAN INDIAN, INC., E. S.  
PEGRAM and GUTSON BORGLUM,  
Defendants in Error.

**Order Re Transmission of Original Exhibits.**

Now, upon this 8th day of July, 1921, upon motion of John G. Barnes, attorney for Clara J. Curtis, plaintiff in error, sufficient cause appearing there-



for, and the Court deeming it necessary and proper that such be done, it is

ORDERED that the plaintiff's original Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, and defendant Clara J. Curtis's original Exhibit "A," filed and introduced as evidence on the trial of this cause, be by the clerk of the United States District Court for the Western District of Washington, forwarded to the United States Circuit Court of Appeals for the Ninth Circuit, there to be inspected and considered, together with the transcript of the record on appeal, in the cause, and that after the final disposition of the cause in said court said original exhibits be returned to the said clerk of the District Court.

Done in open court this 8th day of July, 1921.

EDWARD E. CUSHMAN,  
United States District Judge for the Western District of Washington. [91]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 8, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

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[Endorsed]: No. 3716. United States Circuit Court of Appeals for the Ninth Circuit. Clara J. Curtis, Plaintiff in Error, vs. The North American Indian, Inc., a Corporation, E. S. Pegram and Gutson Borglum, Defendants in Error. Transcript of Record. Upon Writ of Error to the United

States District Court of the Western District of  
Washington, Northern Division.

Filed July 15, 1921.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. 3716.

CLARA J. CURTIS,

Plaintiff in Error,

vs.

THE NORTH AMERICAN INDIAN, INC., E. S.  
PEGRAM and GUTSON BORGLUM,  
Defendant in Error.

**Designation by Plaintiff in Error of Exhibits to be  
Printed.**

Comes now the plaintiff in error in the above-entitled action, by John G. Barnes, her attorney, and makes the following statement of the errors on which plaintiff in error intends to rely, and of the parts of the record in said cause which she thinks necessary for the consideration thereof, as follows:

The errors upon which plaintiff in error intends to rely are:

1. Denial of the motion of plaintiff in error to

quash the writ of replevin, and its execution by the marshal.

2. Denying objection of plaintiff in error to the admission in evidence, and in admitting in evidence, Plaintiff's Exhibit 15.

3. In granting the petition of E. S. Pegram and Gutson Borglum that they be added as plaintiffs in the action, and in entering an order adding them as plaintiffs therein.

4. In granting the motion of defendants in error for a directed verdict of the jury, in directing the jury to return the verdict returned by it, and in accepting and receiving said verdict.

5. In taking from the jury the right to pass upon the jurisdictional issues of fact raised by the complaint and answer of plaintiff in error.

6. In denying the motion of plaintiff in error for a new trial.

7. In rendering and entering the judgment made and entered in the cause.

The parts of the record in said cause which plaintiff in error thinks necessary for the consideration of said foregoing errors relied upon by her are the following:

1. The transcript of the record prepared by the Clerk of the District Court, which includes Plaintiff's Exhibit 12.

2. Original Exhibits: Plaintiff's Exhibits Nos. 13, 14 and 15, and Defendant's Exhibit "A."

JOHN G. BARNES,

Attorney for Plaintiff in Error.

Receipt of copy and service of foregoing state-

ment and designation this 27th day of July, 1921, is hereby admitted.

WRIGHT & WRIGHT,  
POE & FALKNOR,  
Attorneys for Defendants in Error.

[Endorsed]: No. 3716. United States Circuit Court of Appeals for the Ninth Circuit. Clara J. Curtis, Plaintiff in Error, vs. North American Indian, Inc., et al., Defendants in Error. Designation of Plaintiff in Error under Rule 23. Filed July 29, 1921. F. D. Monckton, Clerk.

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**Plaintiff's Exhibit No. 13.**

Nos. 5225, 5328. Plffs. Ex. #13.

JOHN G. BARNES  
Attorney-at-law  
1017 White Bldg.  
Seattle, Washington

April 9, 1920.

Mr. Edward S. Pegram,  
23 Wall Street,  
New York City, N. Y.

Dear Sir:

Early last July James W. Bryan called on you, as the attorney for Mrs. Clara J. Curtis, the wife of Edward S. Curtis, in the divorce suit of Mrs. Curtis against Mr. Curtis.

He explained to you that in the divorce decree Mrs. Curtis had been awarded the Curtis Studio in Seattle, including whatever right Mr. Curtis had in the negatives, or right to take prints therefrom, belonging to The North American Indian, Inc., and

that Mr. Curtis had been enjoined from removing any negatives, or prints, or other property whatever, from the Curtis Studio.

From that part of the decree disposing of the property Mr. Curtis appealed to the Supreme Court, which court has just handed down a decision affirming the decree. The lower court which tried the case, would not permit Mr. Curtis to supersede the injunction against removing any of the property from the studio, or to appeal therefrom.

Mr. Bryan, who on account of his political activities requiring his absence from Seattle, is no longer the attorney for Mrs. Curtis, and she has employed me to handle her affairs.

Mr. Bryan wrote Mrs. Curtis that you told him you would get from Mr. Curtis an inventory of just what belonged to The North American Indian, Inc., that was in the Curtis Studio in Seattle, and would either give, or allow, her to make a copy thereof.

Would you be kind enough to advise me how far you have progressed in that matter. Mrs. Curtis expects to be able to take possession of the Curtis Studio in about thirty days and would, of course, like to know what belongs to her and what belongs to the North American Indian, Inc.

As I have heretofore said, Mrs. Curtis was awarded whatever right of possession, taking prints therefrom, etc., which Mr. Curtis had in the negatives belonging to The North American Indian, Inc. She would very much like to enter into a definite agreement with the North American Indian Inc.,

Mr. Edward S. Pegram      2      Apr. 9, 1920.  
as to the rights, and I can assure you that she will  
faithfully keep her part of that agreement and not  
follow in the footsteps of her former husband.

Hoping to hear from you soon, I remain,  
Very truly yours,  
JOHN G. BARNES.

[Endorsed]: No. 3716. United States Circuit  
Court of Appeals for the Ninth Circuit. Filed Jul.  
15, 1921. F. D. Monckton, Clerk. Plffs. 13.

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**Plaintiff's Exhibit No. 14.**

5225, 5328. Plff. Ex. No. 14.

Telephone—Vanderbilt 6000

**THE COMMODORE**

Forty-Second Street and Lexington Avenue  
Grand Central Terminal  
Pershing Square  
New York

John McE. Bowman

President,

George W. Sweeney

Vice Pres. & Mgr.

July 17, 1919.

Mr. Edward S. Pegram,  
23 Wall Street,  
New York City.

Dear Sir:

Confirming my statements to you today and in  
order to make a sort of record of my suggestions for



our mutual convenience, you will please permit me to say concerning the case of the North American Indian and the Curtis Studio that Mrs. Curtis has been awarded by the Court all the rights of her husband, Edward S. Curtis, in the Curtis Studio and all of the rights of her said husband in the printing and selling of any kind of photographic productions or Indian Prints at the City of Seattle.

The question arises as to what portion of the equipment and other things at Seattle now incorporated in the Curtis studio in fact belongs to the Curtis's and what portion belongs to the North American Indian. Of course the Court cannot award to Mrs. Curtis anything that belongs to your corporation.

As I understood our agreement it was that you would write to Mr. Curtis and obtain from him a definite itemized statement of everything that there is now at Seattle which in fact belongs to the North American Indian, and having obtained same, that you will send me a copy of it. This statement I shall be very glad to get and its contents may satisfy the necessary demand for information along that line. It would be a round-about way for us to obtain this information through the Court. It would be more troublesome to do it that way. It is only fair, from another standpoint, that we should know what portion of the equipment or what things there are at Seattle that your company claims in view of the fact that the Court has awarded the Studio to Mrs. Curtis. In this connection I desire to state that the judgment awarding Mrs. Curtis

the Studio has been appealed by Mr. Curtis, and is now pending for final decision in the Supreme Court of Washington.

2—

There was this further proposition discussed by us this morning, concerning which I desire your leave for me to present in this manner my view of. We feel that whatever property the North American Indian may have at Seattle which may legitimately be used as a part of the Curtis Studio, or in its operation, that Mrs. Curtis should be given such privileges by a mutually satisfactory agreement with the North American Indian, as are now enjoyed by Mr. Curtis.

We understand there are negatives which pertain to Indian lore but which are not part of the publication known as *The North American Indian*, and which Mr. Curtis has full right to make use of. Now, whether these are owned by *The North American Indian*, or by Mr. Curtis, we want to have the use of them at the Studio. Mrs. Curtis can accept and give bonded guarantee for the preservation of any stock, negatives, or property of any kind, and she can also give bonded guarantee to comply with any contract that she may make, either as to the faithful care of the property or as to the payment of royalties, or otherwise.

Finally, I desire to bespeak your courteous consideration of Mrs. Curtis. She has borne the brunt of the work of establishing this Curtis Studio, and has looked out for the business while Mr. Curtis was abroad. We think you ought to accept the findings

and conclusions, and decree of the Court as evidence of her merit and of her absolute right to first consideration in this matter. Then you know Mr. Curtis and you are bound to agree that there is no hope for Mrs. Curtis being cared for and for the minor child being looked after, except through enforcement of the Court's decree. That is to say, Mr. Curtis' promises are entirely futile and cannot be relied upon.

Thanking you very *mindly* for your courtesies, I remain

Very truly yours,  
J. W. BRYAN.

Address:  
Washington, D. C.,  
c/o Senator Miles Poindexter—till Sept. 1, 1919.  
2501 Westview Drive, Seattle, Wash., after Sept. 1,  
1919.

[Endorsed]: No. 3716. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 15, 1921. F. D. Monckton, Clerk. Plffs. 14.

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**Plaintiff's Exhibit No. 15.**

5225. Plff. Ex. 15. Adm. Nov. 5.  
Form 1-11.

NOTICE OF ASSESSMENT AND RECEIPT  
STATE TAX DEPARTMENT, ALBANY, N. Y.  
Date 11/18/19.

NOTICE is hereby given that there has been assessed against you the amount set opposite as a franchise tax under Art 9-A of the tax law.

It is due and payable on or before JANUARY 1, 1920.

CERTIFIED CHECKS should be payable and forwarded to STATE COMPTROLLER Albany, N. Y., with this form.

North American Indian, Inc.

437 Fifth Ave.,

N. Y. City.

# STATE FRANCHISE TAX

On Business Corporations

For Period Ending October 31, 1920

TAXES, PENALTIES, ETC.

Tax on income at  $4\frac{1}{2}\%$ ..... \$110.00

One mill on cap. stk.....

Minimum tax .....

Penalty .....

Interest .....Jan. 9-1920

Total, .....

Received payment,

EUGENE M. TRAVIS,

Comptroller.

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Assistant Deputy Comptroller.

This notice must be returned at the time payment is tendered, as when properly signed it becomes a receipt for taxes. (OVER)

If the amount of the annual net income as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer, a return of such changed or corrected net income, under oath or

affirmation, shall be made to the State Tax Commission, Albany, N. Y., within ten days thereafter.

[Stamped]: Received Jan. 2, 1920. Comptroller's Office, State of New York.

State of New York,

Office of the Secretary of State,—ss.

IT IS HEREBY CERTIFIED, That the Certificate of Incorporation of

The North American Indian,

with acknowledgment thereto annexed, was filed and recorded in this office on the 18th day of December, 1909.

WITNESS my hand and the seal of office of the Secretary of State at the City of Albany, this fourth day of October, one thousand nine hundred and twenty.

[Seal]

C. W. TAFT,

Second Deputy Secretary of State.

[Endorsed] : No. 3716. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 15, 1921. F. D. Monckton, Clerk. Plffs. 15.

**Defendant's Exhibit "A."**

5225. Defts. Ex. "A." Adm. Nov. 5. 4261

UNITED STATES OF AMERICA

STATE OF NEW YORK

By

FRANCIS M. HUGO

Secretary of State and Custodian of the Great Seal  
Thereof.

IT IS HEREBY CERTIFIED, That CHARLES W. TAFT was, on the day of the date of the annexed Certificate and Attestation, Second Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attestation and Certificate and to perform the duties belonging to the Secretary of State in making such Attestation and Certificate, in like manner as said Secretary of State; that the said Certificate and Attestation are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attestation is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Second Deputy Secretary of State is in his own proper handwriting and is genuine; and that full faith and credit may and ought to be given to his acts; and, further, that the Secretary of State is the Custodian of the original certificate of incorporation so certified and



attested and Custodian of the Great Seal of said State, hereunto affixed.

IN TESTIMONY WHEREOF, The  
[Seal] Great Seal of the State is hereunto  
affixed.

WITNESS my hand at the City of Albany, the nineteenth day of October, in the year of our Lord one thousand nine hundred and twenty.

FRANCIS M. HUGO,  
Secretary of State.

## THE NORTH AMERICAN INDIAN.

### CERTIFICATE OF INCORPORATION.

We, the undersigned, all being persons of full age and at least two-thirds being citizens of the United States, and at least one of us a resident of the State of New York, desiring to form a stock corporation, pursuant to the provisions of the Business Corporations Law of the State of New York, do hereby make, sign, acknowledge and file this certificate for that purpose, as follows:

FIRST.—The name of the proposed corporation is The North American Indian.

SECOND.—The purposes for which it is to be formed, are to prepare for publication, print, electrotypes, bind, sell and distribute the publication known as "The North American Indian," heretofore conducted and now being conducted by Edward S. Curtis.

To apply for, purchase or otherwise acquire and to sell, either as principal or agent and as freely

as natural persons might or could do, the said publication and any allied or incidental publications.

To acquire, own, deal in and deal with all materials and articles of any kind or description used or useful in connection with any or all of the purposes and objects hereinbefore expressed.

To acquire and take over as a going concern and to carry on the business of the said Edward S. Curtis in connection with the said publication and in furtherance thereof and in connection therewith to acquire the good will and all or any part of the assets and to assume or otherwise provide for all or any of the liabilities of the owner of such business in connection therewith.

To manufacture, purchase or otherwise acquire and to sell and deal in all kinds of materials, goods, wares, and merchandise which may be required for any of the purposes of the company's business, or which may seem capable of being profitably used or dealt in in connection with such business.

Subject to the restrictions or limitations imposed by law to purchase or otherwise acquire, hold, own, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of the shares of the capital stock, bonds, obligations or other securities or evidences of indebtedness of other corporations, domestic or foreign, and the good will, rights, assets and property of any and every kind or any part thereof, of any person, firm or corporation, domestic or foreign, and if desirable to issue in exchange therefor the stock, bonds or other obligations of this company, and while the owner of such shares of the

capital stock to exercise all rights, powers and privileges of ownership, including the power to vote thereon; and for any and all lawful purposes, in the course of the transaction of the business and affairs of the corporation, to acquire real and personal property, rights and interests of every nature, and to execute and issue bonds, debentures and other negotiable or transferable instruments, and to mortgage or pledge any or all other property of the corporation; to secure such bonds, debentures or other instruments, upon such terms and conditions as may be set forth in the instrument or instruments mortgaging or pledging the same, or in any deed, contract or other instrument relating thereto.

To purchase or otherwise acquire real and personal property of any and all kinds that may be lawfully acquired and held by a business corporation, and in particular lands, leaseholds, shares of stock, mortgages, bonds, debentures and other securities, merchandise, book debts and claims, copyrights, manuscripts, trademarks trade names, brands, labels, patents and patent rights, licenses, grants and concessions and any interest in real or personal property.

To make, accept, endorse, execute and issue promissory notes, bills of exchange, bonds, debentures and other obligations, from time to time, for the purchase of property or for any purpose in or about the business of the company, and to secure the payment of any such obligation by mortgage, pledge, deed of trust, or otherwise.

To sell, improve, manage, develop, lease, mortgage, dispose of or otherwise turn to account, deal in or deal with all or any part of the property of the company.

To do all and everything necessary, suitable and proper for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers hereinbefore set forth, either alone or associated with other corporations, firms or individuals, and to do any other acts, thing or things incidental or pertaining to, or growing out of, or connected with the aforesaid business, or powers, or any part or parts thereof, provided the same be not inconsistent with the law under which this corporation is organized.

The business or purpose of the company is from time to time to do any one or more of the acts and things herein set forth; and it may conduct such business in all its branches or any part thereof outside of the State of New York, and in other States and Territories and dependencies of the United States and in foreign countries.

THIRD.—The amount of the capital stock is one hundred and fifty thousand dollars (\$150,000), of which the sum of one hundred thousand dollars (\$100,000) shall be preferred stock and the sum of fifty thousand dollars (\$50,000) shall be common stock.

The said one hundred thousand dollars (\$100,000) of preferred stock shall be entitled to receive dividends at the rate of six per cent. per annum, payable semi-annually, on the first days of November

and May in each year, or such other dates as may be determined by the board of directors, out of the earnings of said company, in preference and priority to any dividends upon the common stock, and such dividends shall be cumulative, so that any deficiency in the dividends to be paid on said preferred stock shall be made good out of the earnings of subsequent years before any dividends shall be paid upon the common stock. Such preferred stock shall not, however, be entitled to participate in any other or additional earnings or profits, but shall be entitled to be repaid in full upon any distribution of the assets of the corporation in the event of insolvency or dissolution, before any distribution of capital shall be made to the common stock.

The company shall have the option of redeeming the preferred stock, in whole or in part, at any time and from time to time, at the par value thereof, in addition to dividends accumulated, earned or accrued thereon. Such redemption shall be effected by payment out of the surplus fund, if any, of the company. Such redemption of preferred stock may be made at any time by the board of directors upon request of the holder of the preferred stock, if there shall be sufficient surplus profits to warrant such redemption, or it may be made at any time, upon the election of the board of directors by giving thirty days' notice to the holder of the preferred stock selected for redemption, of the time when the same will be so redeemed.

Neither the amount of the preferred stock nor the amount of the common stock shall be increased nor shall more than sixty thousand dollars (\$60,000) of



preferred stock be issued except with the express assent of the holders of a majority of the preferred stock and the holders of a majority of the common stock outstanding at the date of the consent to any such increase.

FOURTH.—The number of shares of which the the capital stock shall consist is one thousand five hundred shares (1500), each of the par value of one hundred dollars (\$100), being one thousand (1000) shares of preferred stock and five hundred (500) shares of common stock, the preferred stock and common stock being of the same denomination, and the amount of capital with which said corporation will begin business is one thousand dollars (\$1,000).

FIFTH.—The principal business office of the corporation is to be located in the Town of Ramapo (Sterlington Post Office), Rockland County, State of New York.

SIXTH.—Its duration is to be ten years.

SEVENTH.—The number of its directors is to be three and pursuant to law it is hereby provided that directors are not required to be stockholders.

EIGHTH.—The names and postoffice addresses of the directors for the first year are as follows:

Names.	Postoffice Addresses.
Edward S. Curtis,	Seattle, Washington.
Robert C. Morris,	City of New York, New York (135 Broadway, Borough of Manhattan).
F. Gordon Brown,	City of New York, New York (23 Wall Street, Borough of Manhattan).



NINTH.—The postoffice addresses of the subscribers to this certificate and a statement of the number of shares of stock—all being preferred stock—which each is to take in the corporation are as follows:

Names.	Postoffice Addresses.	Number of Shares of Preferred Stock.
Edward S. Curtis,	Seattle, Washing- ton.	4
Robert C. Morris,	City of New York, New York (135 Broadway, Bor- ough of Manhat- tan).	3
F. Gordon Brown,	City of New York, New York (23 Wall Street, Bor- ough of Manhat- tan)	3

TENTH.—The board of directors may appoint an executive committee of one, which committee shall be known by the designation General Manager. Whenever the board of directors are not in session such General Manager shall have and may exercise any and all powers of the board of directors in the management of the business operations of the corporation which may be lawfully delegated. The said committee shall continue during the pleasure of a majority of the board of directors. The power of said committee shall not be construed to extend to the declaration of dividends, to the sale, leasing, or encumbering of the real property of the corporation, or to the purchase or retirement of preferred

stock; the powers to be exercised by said committee to be confined to the carrying on of the usual and ordinary business operations of the company.

Inasmuch as the principal business of the corporation will involve and depend upon the personal services of Edward S. Curtis, it is expressly declared and provided that from time to time contracts with the said Edward S. Curtis may be made by the board of directors notwithstanding he shall be a member of such board and be present at and participate in its transactions concerning such contracts, and notwithstanding the directorship of the said Edward S. Curtis and of his participation in such contract and in the transactions relating thereto, the same, if otherwise valid, shall be enforceable according to the terms thereof.

The meetings of the board of directors may be held at any place within or without the State of New York.

IN WITNESS WHEREOF, We have made, signed and acknowledged this certificate in duplicate, this 16th day of December, 1909.

EDWARD S. CURTIS.

ROBERT C. MORRIS.

F. GORDON BROWN.

In presence of

WM. H. BRUDER.

State of New York,

County of New York,—ss.

On this 16th day of December, 1909, before me personally appeared Edward S. Curtis, Robert C.

Morris and F. Gordon Brown, to me personally known and known to me to be the persons described in and who made and signed the foregoing certificate and severally duly acknowledged to me that they had made, signed and executed the same for the uses and purposes therein set forth.

[Seal]

WM. H. BRUDER,  
Notary Public,  
New York County.

[Endorsed]: Dated: December 16, 1909. The North American Indian. Certificate of Incorporation. Tax for privilege of organization of this Corporation—\$75—Under Section 180, Chapter 62, Laws of 1909. Paid to State Treasurer before Filing. State of New York. Office of Secretary of State. Filed and Recorded Dec. 18, 1909. Samuel S. Koenig, Secretary of State.

State of New York, 46271  
Office of the Secretary of State,—ss.

I have compared the preceding with the original Certificate of Incorporation of

The North American Indian,  
filed and recorded in this office on the 18th day of December, 1909, and do HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole of said original.

WITNESS my hand and the seal of office of the Secretary of State, at the City of Albany, this

nineteenth day of October, one thousand nine hundred and twenty.

[Seal]

C. W. TAFT,

Second Deputy Secretary of State.

[Endorsed]: No. 3716. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 15, 1921. F. D. Monckton, Clerk. Defts. "A."